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ABSTRACT

Based on the findings of the Management Employee Relations in Corrections (MERIC) project, this management guide for correctional administrators is designed to facilitate enlightened and responsible management within the context of public sector labor relations. The introduction to the guide describes the MERIC study and discusses trends in state collective bargaining, labor relations in the public sector, labor relations in state prison administration, and the impact of prison employee unionization. The guide is divided into five chapters which cover the following issues: general issues in collective bargaining, issues relating to employee benefit provisions, issues involving union role in state correctional administration, issues involving other correctional services, and future issues. A public agency index concludes the guide, and a glossary of collective bargaining terms and a list of public sector labor relations resources are appended. (BM)

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Prison Employee Unionism: Management Guide for Correctional Administrators

by
M. Robert Montilla

January 1978

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FOREWORD

Every significant correctional commission and criminal justice task force since the historic American Prison Association Congress in 1870 has emphasized the poor performance of our penal institutions as agencies of offender rehabilitation. Yet despite a widespread loss of confidence in American prisons and their rehabilitation goals, prisons remain essentially unchanged and grow in population more rapidly than at any other time in our history. Their total growth has been over 10 percent annually since 1973. They are more overcrowded, more chaotic, and more costly than ever before. And whether they meet either the goals of criminal justice or our social needs is a subject of national debate. The report of the National Planning Association on the "National Manpower Survey - Criminal Justice System," issued in December 1976, projects an increase in the total number of state prisoners from 217,000 in early 1976 to 243,000 in 1980 and 252,000 in 1985. Thus, the explosive prison population growth of the past three years is expected to continue for another decade--a frightening concept from nearly every perspective.

In 1976, more than half of the nation's 9.2 million state and local government employees were members of labor unions. In examining the growth and development of public employee unions in state correctional agencies, the MERIC project team sought evidence that this movement has contributed to the improvement of conditions in prisons. The findings have been disappointing in this regard:

1. Prison management has been weakened, both directly through the establishment of employee-centered rights such as seniority job assignment and indirectly through close political relationships between elected state officials and union leaders.

2. The direct and indirect costs of security manpower have increased significantly, often to the detriment of other program components of the prison system.

3. The correctional unions have shown a proclivity for opposing most of the correctional reforms recommended by the National Advisory Commission on Criminal Justice Standards and Goals. The unions' objective of protecting and increasing prison employment has often inhibited the development and use of prison furloughs, work release, community-based programs, and sentencing reforms.

Research for the MERIC project tracked prison labor relations in nearly all states with experience in collective bargaining. Efforts were made to see through the eyes of the professional labor relations specialist as well as the professional correctional administrator. Almost from the start, the scope of the analysis appeared too narrow. Corrections is only one part of a total state system, and only by adopting a broad perspective is it possible to understand the workings of organized employee representation in state corrections.

For example, in one state a union contract called for a fifteen-minute rest period within each four-hour work period. The corrections agency could not conform to this provision, yet it was directed to meet the terms of the contract by an arbitrator's decision. Only by knowing that the master agreement had been negotiated by a statewide official--not by a corrections official--could this blunder be understood. Only through familiarity with the state labor relations structure and its political aspects could it be appreciated why the governor's office refused to consider financing the resulting costs to the department. The department had to negotiate with the union for a trade off cost which amounted to one salary step for correctional officers and others. The corrections administrator was made the scapegoat by being required to absorb the several million dollar cost of this error from within the department's existing appropriations. This administrator resigned and was replaced by a new director who had the support of labor.

Democracy is not a neat and orderly process. By design, central authority is divided to provide checks and balances on power. By design, the elective and legislative processes enable pluralistic representation in both the formal structure and in the manner in which the state administers its services. The unions cannot be faulted for pursuing so energetically the objectives of their membership. If public sector employee organizations, in some instances, have had undue or unfavorable impact on state government operations, it is perhaps largely because policy-makers in the executive and legislative branches, while responsive to the political demands of labor, have failed to consider related but broader issues of concern to all groups.

The problem is how to make public sector labor negotiations work more in the interest of the general public. The public employee union movement has already reached a majority of states, but the system is still young. Unions very likely will survive whether or not many changes occur in their relationships with government. But union members and their families have as large a stake in government as the rest of us, and in the future this may become an increasingly important consideration for public employee union leaders.

Violators of the criminal law are sent to prison as the ultimate expression of society's insistence that its members be held accountable for their conduct. Management, labor, and government in general must also demonstrate accountability to each other and to the precepts of justice.

The principal author of this management guide is M. Robert Montilla, whose experience includes state correctional administration, state central personnel management, and public employee labor relations. He has written this guide in the language of the professional correctional administrator. The straightforward presentation, often candid to a degree that risks criticism from all sides, is intended to provide realistic and accurate description and analysis without either exaggeration or understatement. The various topics covered are broken down into issues as an aid to the reader.

Portions of this report have been taken from two other reports of the MERIC project: the final report, entitled, "Prison Employee Unionism--Its Impact on Correctional Administration and Programs", and "Collective Bargaining in Corrections--an Instructional Guide."

Use of this guide depends on the identity of the reader, his particular agency or organization, and the current status of collective bargaining in his jurisdiction. The corrections administrator with extensive experience in collective bargaining and labor relations may wish to go directly to the issue(s) in which he has a special interest. It is our judgment, however, that most people will benefit by reading the document as a book--from beginning to end, skipping nothing. In this way, regardless of prior experience, the reader may obtain some important new information or special insights which could permit his agency to avoid some of the costly mistakes of others. It is hoped that use of this guide will facilitate intelligent and responsible management within the context of public sector labor relations.

Richard A. McGee
President
American Justice Institute

Sacramento
February 1977

The sources whence our suffering comes:
The inadequacy of regulations which
adjust the mutual relationships of
human beings in the family, the state
and society.

Sigmund Freud, 1927 (from Civilization and its Discontents, W. W. Norton, New York, 1962).

INTRODUCTION

Unionization of public employees at all levels of government is here to stay. It is not a new phenomenon, as unions have been recognized for over 40 years in some states (e.g., Connecticut) and for approximately 20 years in others (e.g., New York and Washington). Public agency bargaining at the local level began in the industrial cities of the East and spread to cities in the South and West. Collective bargaining for public employees at the state level has evolved more slowly. In the past ten years, however, more than twenty states have formally authorized collective bargaining for their employees. It is reasonable to expect that in the next ten years nearly all states will be similarly organized.

While most of its principles and techniques have been drawn from the experience of private sector unions, collective bargaining in the public sector is unique in some ways. For example, the power to strike the public employer is obviously much more controversial than it is in the private sector. When this power is used, there is no risk of putting the employer out of business, but the results generally inconvenience and even endanger a greater number of people, and new costs can often be felt by all through tax increases.

The development and execution of policy in a public agency is believed to be much more complex than in private enterprise. Management-employee relations are also more complex. In the public sector, the unions not only deal with professional administrators in pursuit of their interests, but they also have the political power to influence the election of government leaders, including the chief executive, other elected officials, and politically responsive commission members.

The impact of unionization on state correctional agencies and their programs has been dramatic, primarily because of the unique characteristics of prisons and of interactions among management, staff, and inmates within them, and also because of the authoritative structure of the state correctional organization. The purposes of collective bargaining are similar in both the public and the private sector, but the results may be quite different.

Purposes of Collective Bargaining in the Public Sector

- To establish and protect employees' rights
- To improve working conditions and benefits
- To establish and maintain more harmonious employer-employee relationships
- To establish a participative role for employees in management decisions which affect employees

Perceived Results in State Agencies

- Employees have more "rights" expressed by contract; hence, they depend less on the good will of the employer. Due to increased emphasis on seniority as a factor in most personnel decisions, incentives are somewhat diminished for those employees with greatest ability and motivation to work and advance. This tends to intensify the adversary aspects of the relationship between management and employees.

- Substantial new employment has been created for union and management employees engaged in the process of management-employee relations.

- An independent, well-financed political force of union organizations has emerged to bear on elected officials and legislators and to encourage the establishment of public policy supporting the interests of dominant employee groups.

- Costs of public agency activities have increased, primarily through increased direct and indirect costs of personnel.

- Management authority has diminished, making administrators' jobs more difficult and, because their responsibilities have not decreased, causing them to be insecure and less satisfied with their own employment.

- Some merit-principle aspects of civil service systems have been weakened, and the discharge, demotion, or transfer of employees for disciplinary or administrative reasons tends to be even more difficult.

Current Problems Facing State Correctional Administrators

Emergence of the employee union is but one of the many problems facing correctional managers today. The administrator can do little to directly affect the first five problems listed below. The sixth, employee organization for collective bargaining, is a problem with which the skillful administrator can work. Its resolution can be the basis for modifying public opinion and achieving political changes needed in solving the first five problems.

- Public ambiguity, apathy, and doubts about corrections' role and methods

- Overcrowded, deteriorating facilities and inadequate resources

- Diminished interest in rehabilitation without sufficient alternatives to prisoner idleness

- Unfavorable changes in prisoner characteristics and attitudes
- New constitutional issues raised by courts
- Employee organization for collective bargaining, causing:
    - Reduction of management's powers
    - Increased costs of operations without productivity offsets
    - Diminished organizational teamwork, lack of employee motivation, and reduced rapport with prisoners
    - Resistance to affirmative action programs

BASIS FOR THE MANAGEMENT GUIDE

The focus of the study underlying this management guide is on state prison administration, with adult probation and parole operations and juvenile corrections covered only peripherally. This emphasis reflects major corrections activity in collective bargaining. For a variety of reasons, the prior existence of employee organizations and the large number of employees in prisons have made prison employee organizations the predominant group in the corrections field.

Management-Employee Relations in Corrections (MERIC) Project

This guide is based on a project funded by LEAA-NILECJ in 1975-76 which targeted on a comprehensive analysis of the scope, processes, and impact of collective bargaining in state correctional agencies. The project was carried out by the American Justice Institute under Richard A. McGee, project director, and

John M. Wynne, Jr., associate project director. The final report of this project is a separate document filed with LEAA-NILECJ in March 1977.

The MERIC project conducted a mail questionnaire survey of all states and territories. Subsequently, sixteen states with a substantive history of significant current developments in formal collective bargaining were subject to bi-disciplinary team field investigations.

In each case, the field teams represented expertise in both correctional administration and in management-labor relations. All planning and survey phases of the project were reviewed closely by a National Advisory Panel composed of distinguished authorities whose experience was highly pertinent to the project.

In addition to the final report of the study, the grant required production of a management and resource guide for correctional administrators. This guide, written by project staff and consultants, is designed for use by correctional administrators whose employees already have or are about to be included in a collective bargaining agreement.

Project Emphasis on State Prison Administrations

The MERIC project initially focused on all state correctional agencies. However, the most significant developments were found in the adult prison component of the state correctional system. In some states, of course, this represents nearly all of the state's correctional functions, while in others the state correctional agency also is responsible for juvenile institutions, probation, and aftercare, as well as adult probation and parole.

While all aspects of state corrections were subjected to some field investigation, budgetary restrictions required certain limitations on scope. Principal emphasis was on high-security state prisons. The findings and recommendations nonetheless seem to have universal applicability within a state system. City and county correctional administrators should find that most of what is covered is also pertinent to local government services with some interpolation to account for local conditions.

Style Comments

This guide is written expressly for state corrections administrators who have responsibility for the operation of state prisons. To facilitate readership, there is a minimum of source evidence cited and a minimal explanation of technical correctional terms. The use of the masculine "him" or "he" is meant to include both genders.

TRENDS IN STATE COLLECTIVE BARGAINING

The trend toward expansion of public agency collective bargaining is irresistible because of the congruence of interests among state political leaders, unions, and employees of state government. Thirty-three states and more than half of all state correctional workers are now represented by collective bargaining agreements. Table 1 lists the states which have some degree of collective bargaining.

TABLE 1

SCOPE AND EFFECTIVE DATE OF STATE COLLECTIVE BARGAINING

STATE	BARGAINING SCOPE			EFFECTIVE DATE (By Legislation Except as Noted)
	MEET-AND-CONFER	NONWAGE BARGAINING	COMPREHENSIVE COLLECTIVE BARGAINING	
ALASKA			X	1972
CALIFORNIA*	X			1971
CONNECTICUT*			X	1951 CASE LAW
DELAWARE			X	1965
FLORIDA*			X	1973
HAWAII			X	1970
ILLINOIS*			X	1973 EXECUTIVE ORDER
INDIANA*			X	1973 A.G. & CASE LAW**
IOWA			X	1976
KANSAS	X			1973
KENTUCKY	X			1966 CIVIL SERVICE BOARD
LOUISIANA*		X		1974 A.G. & CASE LAW
MAINE			X	1974
MASSACHUSETTS*			X	1973
MICHIGAN*	X			1971 CIVIL SERVICE BOARD
MINNESOTA			X	1971
MISSOURI			X	1967
MONTANA			X	1973
NEBRASKA			X	1947
NEW HAMPSHIRE		X		1969
NEW JERSEY*			X	1941
NEW YORK*			X	1967
NORTH DAKOTA			X	1951
OHIO*		X		1959 A.G. & CASE LAW
OREGON*			X	1963
PENNSYLVANIA*			X	1974
RHODE ISLAND*			X	1941
SOUTH DAKOTA			X	1969
VERMONT			X	1969
WASHINGTON*		X		1971 EXECUTIVE ORDER
WEST VIRGINIA			X	1974 A.G. & CASE LAW
WISCONSIN*			X	1966
WASHINGTON, D.C.		X		1970 EXECUTIVE ORDER

*State covered by field survey
**Unconstitutional by State Court, 1976

(Note: A.G. = Atty. General)

Three different degrees of collective bargaining are commonly found:

1. Meet-and-confer: While technically not a type of collective bargaining, meet-and-confer is clearly a step toward such bargaining. Meet-and-confer is a formalized process whereby correctional administrators and union representatives meet to discuss employee working conditions, benefits, organizational and operational procedures, and other matters affecting employees. A meeting agenda is prepared and minutes are maintained. In addition to the communications value of such meetings, management is expected to make some affirmative response to union requests. However, there is no procedure to resolve disputes by involvement of third parties, and no contracts results from this process.

2. Nonwage Collective Bargaining: Formal bargaining over all matters except compensation rates. It can include economic issues such as policy on overtime. Impasses are resolved by referral to mediation, fact-finding, and arbitration.

3. Comprehensive Collective Bargaining: Formal bargaining and impasse resolution procedures on all employee matters, including wages and salaries but usually excluding retirement plans.

Table 2 lists the correctional employee unions and associations in the sixteen states surveyed by the MERIC project team; the AFSCME/AFL-CIO is active in each of these states, with the exception of California.

LABOR RELATIONS IN THE PUBLIC SECTOR

Labor relations in the public sector can be clearly differentiated from labor relations in the private sector in three major ways: (1) the primary context of the union-management relationship in the public sector is political rather than economic; (2) the union-management relationship in the public sector tends to be multilateral rather than bilateral; and (3) bargaining in the public sector involves the imposition of political as well as economic costs.[1]

TABLE 2

CORRECTIONAL EMPLOYEE UNIONS AND ASSOCIATIONS IN 16 STATES

(Nurses, Teachers, and Craft Unions Excluded)

STATE / EMPLOYEE UNIONS AND ASSOCIATIONS	AFSCME AFL-CIO	STATE EMPL. ASSN. or CIVIL SERVICE ASSN.	SEIU AFL-CIO	CORR. OFFICERS - NATIONAL ASSN. OF GOVERNMENT EMPLOYEES	TEAMSTERS	OTHER STATE UNIONS AND ASSOCIATIONS	POLICEMEN'S BENEVOLENT ASSOCIATION
CALIFORNIA		X		X	X		
CONNECTICUT	X	X		X		X	
FLORIDA	X						
ILLINOIS	X						
INDIANA	X	X					
LOU[illegible]A	X						
MASSACHUSETTS	X		X				
MICHIGAN	X	X	X				
NEW JERSEY	X	XX					X
NEW YORK	X	X					
OHIO	X	X		X	X	X	
OREGON	X	X					
PENNSYLVANIA	X		X				
RHODE ISLAND	X			X			
WASHINGTON	X						
WISCONSIN	X					X	

AFSCME - American Federation of State, County and Municipal Employees

SEIU - Service Employees International Union

The political context of public sector labor relations is obvious. First, state systems generally are administered by individuals appointed by and serving at the pleasure of the state's governor. Elected officials and their appointees are acutely aware of the political context in which they operate. Second, governmental organizations usually do not sell their products in a competitive market. Most frequently, the state operates a monopoly with respect to the provision of services, and agency programs are financed from general tax revenues. The determination of tax rates and the allocation of tax revenues to the various governmental organizations are highly political processes.

The political nature of public sector bargaining is magnified by the complexity of negotiations between management and employees. In contrast to collective bargaining in the private sector which is essentially bilateral (management versus employees), public sector bargaining is multilateral since more than two groups are involved in the bargaining process. Public sector bargaining cannot be viewed as a series of discrete bargaining relationships between a management and a single employee unit. Instead, coalitions of bargaining units and employee representatives negotiate for their common and diverse interests with a multifaceted management. Even where single bargaining unit negotiations take place, negotiations with one unit are influenced by negotiations with others. Further complicating the situation, state legislatures, courts, and, to some extent, the general public are participants in the bargaining process.

In such a political context, the power of employee groups resides in their ability to confer political advantages or to impose political costs on elected officials and governmental administrators. The imposition of political costs can take many forms, e.g., a lack of political support during an election campaign or opposition to programs which a particular administration is attempting to implement.

Clearly, employee organizations seek economic benefits for their membership. However, in the public sector the balance sheet for elected officials and their appointees often is more of a political than an economic statement. Juris and Feuille have described the political nature of public sector labor relations:

> The union management relationship in the public sector is shaped immediately by the constraints imposed by political markets rather than economic markets. . . . Thus, the union's bargaining power in the public sector consists of its ability primarily to manipulate the political costs of agreement and disagreement of the various managers rather than the economic cost manipulation that characterizes union power in the private sector.[2]

Many state and local political candidates place major emphasis on law enforcement and criminal justice issues, and the support or opposition of correctional employee organizations can a-fect the outcome of an election. During the early 1970s in Massachusetts, adult and juvenile correctional philosophy was a hotly contested political topic. The organized opposition of correctional employee groups to the state correctional program contributed to the defeat of the governor in a reelection attempt.

Political costs also may be imposed on the internal organizations of both union and management. Public sector management can inflict internal political costs on the leadership of employee organizations by the way in which it responds to employee collective bargaining demands and in the daily operation of the contract administration process. Likewise, employee organizations can affect the internal organizational structure of governmental agencies. Increasingly, public employee organizations are attempting to influence the appointment or removal of administrators. In Massachusetts, for example, prison employee organizations publicly demanded the firing of a corrections commissioner who was attempting to move the department from an institutionally-based to a community-based program emphasis. In Pennsylvania, a national public employee organization attempted, albeit unsuccessfully, to dissuade the governor from appointing a liberal correctional reformer to head the state's juvenile correctional programs.

The political context and the relatively heavy political costs associated with public sector collective bargaining have tended to overshadow the economic aspects. Economic considerations commonly have been dealt with as nonpolitical, secondary issues to the detriment of public agencies and programs and, ultimately, of the fiscal stability of state governments and the public interest.

LABOR RELATIONS IN STATE PRISON ADMINISTRATION

With respect to planning for collective bargaining, carrying it out, and living with what has been negotiated, every state department encounters problems which it regards as different, greater, or more complex than those of other agencies. For example, health agencies point out that many issues of concern to employees directly or indirectly affect the quality of patient care, and medical costs have already increased to the point where public interest is universally aroused. Transportation, police, welfare, employment services, education, and other state agencies also have special problems of similar dimensions.

The state corrections agency--in some cases "agencies" is more appropriate because many of the functions are separate and may be the responsibility of local jurisdictions--also has unique problems which affect the character of management-labor relations. For example, it is the only government agency which:

- Cannot select its clients. (To be sure, a mental hospital may be required to accept court-committed patients, but the hospital determines when patients are well or otherwise ready to return to the community.)
- Has little or no control over release of its clients.
- Serves clients who are there against their will.
- Relies on clients to do most of the work in the day-to-day operation of the institution and to do so by coercion and without fair compensation for their work. The prison would come to a halt without the cooperation of its prisoners. The courts and administrators have done much in recent years to clarify and improve on the interpretation of prisoners' rights. Prisoners, however, do not yet have the right to organize and be represented in their grievances by a union of their choice.

- Usually has no clear, comprehensive law defining what it should do with its clients. State statutes rarely provide direction as to what prisons are to do and how they should do it. And, whatever the prison is supposed to accomplish, it rarely is provided with the necessary resources. Custom and the historical precedents of legislative appropriations establish a de facto program and policy for corrections. The more comprehensive the overall program, the more uncertain the reconciliation of conflict among program elements. Maintaining security conflicts to some extent with the responsibility to assist prisoners to prepare for eventual return to society.

- Does not have its responsibilities defined in "systems" terms. Corrections is an integral part of the system of criminal justice, primarily in the post-adjudication phase of the process. What corrections is expected to do is largely determined not by statutes, but by its relationships to the criminal courts and law enforcement agencies (primarily in local jurisdictions of the state). Corrections is often referred to as the weakest component of the system, and it is easily blamed for the mistakes and failures of the others.

- Can have its capacity grossly overloaded. Prison populations may exceed capacity by 100 percent or more. This almost invariably occurs without adequate financial augmentation. A prison may be operating contrary to all state standards with respect to housing space, sanitary facilities, medical care, etc. It may even be found by the courts to constitute cruel and unusual punishment, prohibited under the Constitution of the United States, but none as yet have been closed as a result of such a finding.

- Depends on the maintenance of satisfactory relationships between its clients (prisoners) and its staff. The keepers and the kept need and depend on each other. The staff (who are basically unarmed and unprotected from the prisoners) know that the majority of prisoners will cooperate with the system in order to leave prison as early as possible. The prisoners also know who they fear the most: other prisoners. The police can be at "war" with criminals, and the language and style of police planning is similar in many ways to that of the military. Corrections, however, cannot be allowed to adopt a warring stance, with the plant and work force a fortress whose strength is turned not outward to an attacker, but inward on itself--against prisoners and staff alike. Correctional management and employees must cooperate to some extent and they must also obtain at least some support from their clients, for conflict among these different groups may be exceedingly costly to all.

An LEAA study of the "Impact of Police Unions"[3] showed that the members of the police union are equal to the police department minus management. In contrast, the prison is a micro-city, self-contained behind a wall or fence and heavily policed. The superintendent is "mayor" to both prisoner and staff populations. Like the city, the prison has its own churches, hospitals, schools, and industry. And, as do city residents, its population has laundry and food services, showers, and television. Prisoners have canteens for their small purchases and their own bank accounts (run by the prison and called "trust accounts"). The prison usually has its own source of water, treats its own sewage, operates its own telephone system, often generates its own electricity, and may provide much of its own food such as vegetables, meat, and milk. Like the city, the prison also has its racial ghettos and racial strife. Unemployment is very high since there is rarely enough work to occupy the entire population. There is a considerable amount of crime--much of it unreported; even when it is reported, it is frequently unsolved.

The superintendent can "run" his city no more than does the mayor of any city. Both preside over an amalgam of groups and subgroups. Prisoners represent various racial, ethnic, and religious subgroups, as do the correctional officers and other employees who may also be members of different unions. Various professional groups are represented, including medicine, education, and social service.

In this complex organizational environment, employee unions may demand inappropriate solutions to correctional problems and substantial benefits and work changes which compensate them more for doing less. For example, good prisoner morale is maintained by an active daily schedule for all prisoners, yet this is difficult to maintain from correctional officer response to conditions of prison overcrowding. With overcrowding, inmate activities are diminished; inmate-to-inmate contact increases; and staff-to-inmate contact decreases. Inmate fears lead to the organization of gangs and alliances and the acquisition of weapons for self-defense. Risks of disturbance, riot, and escape are perceived to be greater and staff tensions increase when they feel in danger of losing control.

Higher pay for correctional officers, more fringe benefits, and even more correctional officers usually will not alter the drift toward prison rebellion. Yet correctional officers tend to seek not only an increase in their numbers, but also a "shortening of the lines" (e.g., speedup of meals, reduced visitation periods, less recreation time, and restricted access to the prisoner canteen). This tends to aggravate relationships in the prison between prisoners and staff as well as among the various staff groups, as correctional officers conflict with counselors, teachers, foremen, and instructors whose work has increased or been made more difficult by the tightening of security and resulting tensions.

IMPACT OF PRISON EMPLOYEE UNIONIZATION

The emergence of correction workers' unions, with the typical employee union interest in job security, working conditions, and other benefits, has provided the direct and indirect power to narrow management discretion and to influence the policies and programs of correctional institutions. The impact of these changes is difficult to assess since correctional agencies, and prisons in particular, are so highly interactive with other parts of the criminal justice system and the social and economic conditions in urban areas of the state. Most of the historic struggles of corrections over the past century are being replayed and the outcome is uncertain, but it is likely that the changes taking place will permanently alter correctional management.

It should be stressed that the problem is not collective bargaining itself, but rather the way in which it is carried out. More often than not, state administrations have performed their functions ineptly, without appropriately qualified staff, without adequate arrangements for input from and feedback to the line operating departments, and without concern for future administrations. Also, state-union contracting procedures usually do not provide for the participation of, and full disclosure of contract cost implications to, the legislative branch or the public. Correctional agencies often have been forced to absorb the costs of new contract provisions which have not been provided for in the state budget. In the fiscal crunch typical of state agencies in the mid-1970s, obtaining additional funds to support provisions of union contracts generally has been given priority over the physical and program needs of prisons and prisoners--and sometimes has increased these needs.

The advent of collective bargaining for employees is a frustrating event to the corrections commissioner and superintendent. It is especially frustrating if it occurs during a period when prisons are overcrowded. Unfortunately, in most recent cases (Florida, Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Washington, D.C.), this is exactly when collective bargaining has been instituted.

Generally, in those states which have concluded union contracts, there has been little, if any, opportunity for the chief correctional executive to affect the basic organization of the bargaining structure. The governor and his labor relations specialists usually have proceeded to develop the collective bargaining structure without adequate consideration of the interests and problems unique to institution-based correctional agencies. As a result, some regrettable mistakes have been made--some irreparably and others at an extravagant and unnecessary cost to the state. In some cases, the quality of the overall correctional program and its prospects for improvement have been seriously damaged.

While some of their methods may be subject to criticism and possible regulation, the unions cannot be blamed for being so skilled at their job: maintaining their own existence and seeking greater benefits for their members. It is the task of correctional administrators to improve their skills and knowledge of the collective bargaining process and to work to achieve a proper balance between the welfare of their employees and that of the agency as a whole, its clients, and the general public.

References

1. Hervey A. Juris and Peter Feuille, Police Unionism: Power and Impact in Public-Sector Bargaining (Lexington, Mass.: Lexington Books, 1973), p. 44.

2. Ibid., p. 51.

3. Hervey A. Juris and Peter Feuille, The Impact of Police Unions - Summary Report, NILECJ Monograph (Washington, D.C.: LEAA, December 1973).

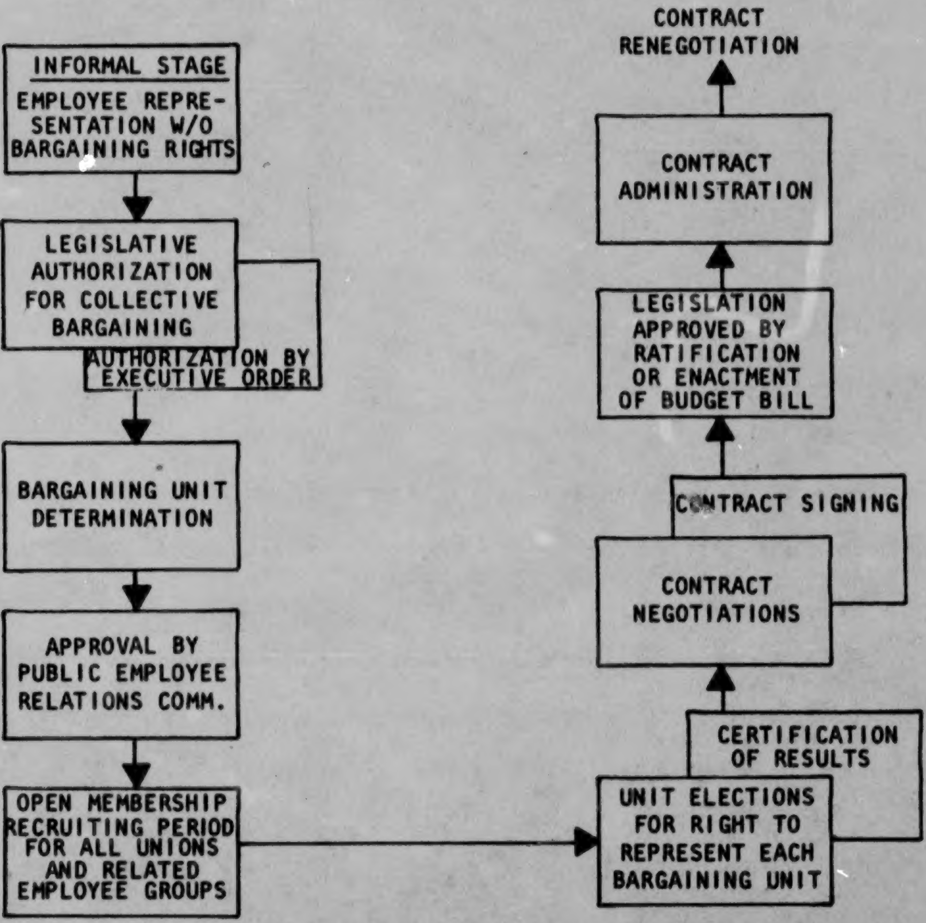
CHAPTER I

GENERAL ISSUES IN COLLECTIVE BARGAINING

There are a number of processes basic to the authorization and execution of new policies enabling collective bargaining for state employees. How these processes are undertaken will largely determine the problems that the corrections administrator will face in negotiatin an agreement and living with its provisions. Figure 1 illustrates the steps of the collective bargaining process in state government.

FIGURE 1

COLLECTIVE BARGAINING PROCESSES IN STATE GOVERNMENT


INFORMAL STAGE
EMPLOYEE REPRESENTATION W/O BARGAINING RIGHTS
LEGISLATIVE AUTHORIZATION FOR COLLECTIVE BARGAINING
AUTHORIZATION BY EXECUTIVE ORDER
BARGAINING UNIT DETERMINATION
APPROVAL BY PUBLIC EMPLOYEE RELATIONS COMM.
OPEN MEMBERSHIP RECRUITING PERIOD FOR ALL UNIONS AND RELATED EMPLOYEE GROUPS
UNIT ELECTIONS FOR RIGHT TO REPRESENT EACH BARGAINING UNIT
CERTIFICATION OF RESULTS
CONTRACT NEGOTIATIONS
CONTRACT SIGNING
LEGISLATION APPROVED BY RATIFICATION OR ENACTMENT OF BUDGET BILL
CONTRACT ADMINISTRATION
CONTRACT RENEGOTIATION

Political-Socioeconomic Impact of Public Sector Collective Bargaining

The average American family earned $5,000 a year in 1953 and paid 12 percent of that amount in taxes. In 1975, the average family earned $14,000 and paid a combined tax of 23 percent. Over the same period of time, state and local taxes increased by 533 percent, property taxes by 82 percent, and social security taxes by 436 percent. The average pay of federal employees has increased by 194 percent during the past twenty years, as opposed to an increase of 142 percent for those employed in the private sectors of the economy.[1]

Collective bargaining between state correctional agencies and employee unions has resulted in the wasteful expenditure of public funds almost beyond belief. The problem is not collective bargaining itself, but rather the overwhelming dominance of political over administrative power, which ensures that short-term partisan political advantage is obtained at the expense of the quality of public service and the economic welfare of the entire community. A contributing factor, unfortunately, has been the naiveté or ignorance of the executive branch's negotiators and the operating agencies which they represent. This naiveté may come from several sources: (1) little experience in bargaining in the public sector; (2) high turnover in top elected and appointive executive branch officials who believe that labor support at any cost is essential to achievement of their other short-range objectives; (3) low turnover of union officials assuring broader and deeper political skills and power sources, and the ability over time to purge their enemies from public service positions; and (4) insensitivity of governors and their labor relations directors to the consequences of weakening management authority in the operating departments by valuing new, costly, and complex labor relations processes over all other management functions.

Theoretical analyses of collective bargaining in both the public and the private sector have long recognized great differences between the two, especially with respect to the power of labor in the public sector to impose political benefits or costs as opposed to the economic benefits or costs imposed in the private sector. "Benefits" in this equation usually have been implied under "costs." But a low- or no-cost contract is not a benefit to management if its provisions restrict management powers, inhibit timely response to new conditions and problems, and diminish accountability for results of the public service delivery system. An added distinction must be that the elected chief executive's political interests often override his managerial responsibilities, especially since few elected governors have had prior managerial experience.

Apparent success with politically inspired and directed labor negotiations can be accomplished if two conditions exist:

1. The true economic and program service costs of various negotiated new provisions (most obvious examples being retirement benefits and leaves with pay) are concealed.

2. Through political rewards, the cooperation of the legislative branch is obtained in near-secret contract ratification procedures.

An almost universal problem in all public agencies in the United States today derives from the past practice of using pension enrichments as

> . . . an attractive alternative to granting salary hikes demanded in public employee bargaining. . . . Typically it is the next generation of politicians and taxpayers who must foot the bill for commitments made in the past. Today we in California have become the "next generation." In a recent four year period, current pension costs rose 380% in medium-sized cities and 348% in large cities. Cal-Tax estimates that at least two-thirds of the $22 billion state-local budget goes to employee salaries and benefits. Public employee retirement now absorbs more than one out of five state and local tax dollars. . . .
>
> "The drastic underfunding of many pension plans for government employees is one of the biggest scandals of our time," according to Dan McGill of the Wharton School. Pension funds are short billions* of dollars in states and localities where officials frequently gave in to workers pension demands, but never raised taxes enough to cover the prospective payments. . . .
>
> Senator Thomas Eagleton draws this conclusion from a major congressional study of public pensions: "For states and municipalities, retirement costs over the next quarter century may force choices between crushing tax increases and bankruptcy." Nor is the picture at the federal level any better. Civilian pension funds were $101 billion in the hole in March 1976, while military retirement had an actuarial deficit of $172 billion. The latter plan has no financial reserve; instead, money comes directly from the defense budget--$8.4 billion this year. The Brookings Institution believes military pension benefits will soon begin to siphon off funds necessary for national defense, while the U.S. Civil Service Commission projects a 1000% increase in its pension payments between 1970 and 1980.[2]

Many pension benefit plans were not established in response to union demands, and the benefits are not necessarily raised as a result of collective bargaining. The impact of bargaining has been primarily in terms of achieving a decrease in employee contributions to such plans. A plan initially funded on a basis of equal contributions of employer and employee can now be over 90 percent employer funded and 10 percent employee funded; in jurisdictions such as New York City, it can be 100 percent employer funded.

Retirement plans are also changed through collective bargaining to achieve reductions in the retirement age. Of course, this increases the length of time the benefits will be paid out. Other factors in increased, unfunded pension costs are: (1) greater life expectancy, (2) reduction in employee turnover, and (3) salary escalation and inflation.

Structural Problems and Reform Needs

The example above reveals that public sector labor relations have been steadily corrupted by the neglect, if not opportunism, of public agency chief executives, top management, and the legislative branch. It is difficult to fault the respective unions for being so skilled in maintaining their existence by obtaining greater benefits for their members. However, their methods may be criticized or subject to regulation (as lobbyists) to reveal and possibly modify their political activities.

The issues in this chapter review the basic structures and operations of collective bargaining in state government. To some extent, the weaknesses and needed modifications are also identified.

References

1. Lewis H. Lapham, "The Easy Chair," *Harper's*, October 1976, pp. 10-12.

2. Glenn Paschall and John Ellis, *Restoring Soundness to California's Public Pension System*, a Cal-Tax research bulletin (Sacramento: California Taxpayer's Association, October 1976), pp. vi-2.

1.00 ENABLING LEGISLATION

Issue: What provisions are desirable in enabling legislation? What problems have developed from the presence or absence of specific statutory provisions in states with collective bargaining experience?

PRINCIPLES FOR ADMINISTRATIVE ACTION

The most common and preferred approach to the initiation of collective bargaining for state employees is through enabling legislation. Often the content of the legislation is developed through the work of a governor's commission or appropriate standing committees of the legislature. Where this occurs, the corrections administrator may have the opportunity to present information and arguments in support of some favorable provisions.

1. It is preferable that the act define the bargaining units rather than define the principle(s) which will guide determination of the bargaining units. (See Issue 1.02.)
2. The act should clearly provide that supervisors, if they choose to be represented, be in a bargaining unit separate from that of the workers they supervise.
3. The act should define and exclude from representation in any bargaining unit or process all managerial employees and their confidential staff.
4. The act should provide that correctional officers, along with any other public safety employee group (such as state police), are expressly denied the right to strike or engage in related job actions.

5. The act should prohibit certain matters from negotiation, including the retirement plan, position classifications, recruitment, civil service examinations, and certification policy changes. Additionally, it is desirable to prohibit the full-time relief from state work of union officers to attend to union business, as well as to provide a policy statement dealing with union officers' relief for union business, including state and national conventions (usually on the basis of time off without pay scheduled at the agency's convenience and discretion).

6. The act should provide for union financial disclosure and independent audits, in addition to the reporting of contributions to state-elected officials or candidates.

Commentary

The above recommendations represent not a consensus of expert opinion, but the considered conclusions of project staff.

Statutory prohibition of the right to strike is not as effective a deterrent as might be expected. Employees covered by such restrictions have walked off the job in many jurisdictions--often suffering no severe penalty.

The considerations which determine the position classification plan are reviewable and sometimes even appealable, but the determination of classes and their pay relationships is no more negotiable than the component items in a profit-and-loss statement.

While union financial disclosure requirements were found in state legislation only in Florida, it was reasoned that since union officials are active in political lobbying and public elections, their political investments should be known to union members and the public.

Origins of Collective Bargaining Problems

The steps taken to achieve collective bargaining in government agencies are, in many cases, the origin of management difficulty with the bargaining process at a later stage. Many problems at the bargaining table or during contract administration arise because of faulty decisions made when the structure of the bargaining units was determined. Thus, problems involving the assignment and authority of correctional lieutenants may derive from the decision to include them in the bargaining unit with officers and sergeants.

Further problems also may result from actions taken by employees or by management during the period before collective bargaining is instituted. In anticipation of enabling legislation, employee groups affiliated with union organizations may do a number of things to enhance their position with respect to the representational elections and construction of the bargaining units. While there is little opportunity for correctional managers to deal affirmatively with the actions of unions during this period, it may be helpful if they recognize and understand their purposes.

Developing "Historical" Relationships

In the determination of bargaining units, consideration is given to established relationships of occupational groups. Correctional officers, realizing that they may be placed in a bargaining unit with state security guards, hospital attendants, or fish and game wardens, may attempt to join with state police, state investigators, or other groups which provide a more powerful bargaining position.

An existing union group also may attempt to create a departmental bargaining unit by organizing membership from within other prison job classifications. This is naturally an outcome desired by many correctional administrators and disliked by management-labor relations specialists.

Developing a Track Record

Unrecognized unions can seek to gain broad employee support--necessary to win a representation election--by highly visible advocacy of employee concerns. Vigorous representation of employee causes before the civil service commission, testimony to legislative committees, press conferences decrying prison employment conditions, attacks on "permissiveness" in correctional policy, and criticism of state officials (including the corrections commissioner, a prison superintendent, or the governor) are all ways to achieve desirable notice.

Establishing Harmonious Relationships with the Existing Correctional Organizations

It is axiomatic that the climate of contract negotiations and its subsequent administration will reflect the attitudes of management toward employee relations and the characteristics of employee groups prior to the passage of enabling legislation and the representational elections. Evidence that management is sincere in attempting to deal with the informal representational process during this period generally will help the union achieve its objectives and facilitate formalized relationships in the future.

Supervisors' Bargaining Unit

In the pre-collective bargaining period, corrections management should hold to the position that correctional officer supervisors, preferably the correctional sergeant and higher ranks, should be represented by a bargaining unit separate from that which includes the line correctional officer. (See also Issue 1.02.)

Correctional supervisors are management employees in the administration of grievance procedures and employee discipline, and in operational assignments in the event of correctional officer strikes, lawful or otherwise. Even though supervisors currently may belong to the union with correctional officers, management will need to make clear to these employees why, under formal collective bargaining, supervisors should not be in the same union. At the same time, supervisors must be made aware whether or not they are entitled to union representation through a separate bargaining unit. While the supervisors and others in the unit may elect the same union which represents the correctional officers, the purpose of the separation is still achieved.

Employee Relations by Executive Order

In most states, the governor has the authority to issue executive orders creating new administrative policy and as such can confer on state employees under his jurisdiction the right to collective bargaining. Where this has occurred, there has been some history of legislative consideration and ultimate rejection of an enabling statute.

While it is debatable whether the objective justifies the means, it is doubtful that the results of collective bargaining by executive order will be nearly as satisfactory as those obtained through legislative authorization. Under the former conditions, the corrections administrator rarely will have much opportunity to influence the governor's decision. Once the executive order is promulgated, however, the tasks of the correctional administrator will be identical to those under legislative authorization.

It must be understood that whatever is agreed to in negotiations may not be honored by the legislature. Legislators may simply refuse to provide the funds needed to implement the provisions of the agreements, or by resolution or statute they may abolish the force and effect of the executive order. Even where there are indications of executive-legislative confrontation on such an issue, the correctional administrator should take seriously the ensuing contract negotiations. The results may stand; and if they do not and legislative enactment eventually occurs, previous agreements will be difficult to rescind.

IMPACT

Future amendment of the enabling legislation to remove or modify provisions which have caused problems for correctional administrators under negotiated agreements cannot be planned for or expected. The best advice on handling problems arising from the enabling legislation may be the following:

1. Explore other ways to deal with the problem, get the facts and analyze them, and discuss the problem with the union and with the state employee relations director. Determine whether it would be feasible to make some changes at the next renegotiation sessions where they may be exchanged for a new benefit or procedure given high priority by the union.
2. Learn from the experience of other states. A problem may be best avoided by dealing with it in the legislative drafting period.

Related Issues

Virtually all issues discussed in this guide have some relationship to the enabling legislation and to the various suggestions offered here.

1.01 BARGAINING UNIT DETERMINATION

Issue: How should bargaining units be determined? Would corrections be better off if all employees were in the same bargaining unit?

PRINCIPLES FOR ADMINISTRATIVE ACTION

One of the most important and controversial aspects of collective bargaining in governmental agencies concerns the proper number and size of bargaining units. In general, the horizontal structure of units based on similarity of jobs is preferred over the vertical structure, such as a departmental or divisional unit in which the departmental function is the prime consideration.

Either structure can result in excessive numbers of bargaining units, but such fragmentation is greatest where vertical structure is adopted. Ideally, jobs should be grouped to produce the largest reasonable units. A typical statute provides:

> . . . In determining the appropriateness of bargaining units, the board shall:
>
> (1) Take into consideration [the fact that] public employees must have an identifiable community of interest, and the effects of over-fragmentation.
>
> (2) Not decide that any unit is appropriate if such unit includes both professional and non-professional employees, unless a majority of such professional employees vote for inclusion in such unit.

> (3) Not permit guards at prisons and mental hospitals, employees directly involved with and necessary to the functioning of the courts. . . , or any individual employed as a guard to enforce against employees and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises to be included in any unit with other public employees. . .
>
> (4) Take into consideration that when the [state] is the employer, it will be bargaining on a statewide basis . . .
>
> (5) Not permit employees at the first level of supervision to be included with any other units of public employees but shall permit them to form their own homogeneous units. In determining supervisory status, the board may take into consideration the extent to which supervisory and non-supervisory functions are performed.[1]

In every state where bargaining unit policy has begun with a statement of principles, a battle among unions (and nonunion employee groups) and protracted negotiations with state employee relations directors and public employee relations commissions have ensued. As a result, the guiding principles were sometimes ignored and structurally undesirable decisions were made.

In one state, for example, the state employee relations director conceded in personal negotiations with the union head that correctional sergeants were not supervisors on the basis of the union's representations that they were not. No hearing by the employee relations commission was held, and the corrections department was given no opportunity to comment.

In another state, a separate bargaining unit was provided for truck drivers, when heavy equipment operators, bus drivers, and mechanical shop personnel were included in another unit. Such a policy of free unit determination may produce a series of separate deals with interested unions, thus setting up a bargaining structure which is almost impossible to change.

The bargaining unit structure of the sixteen MERIC project states is summarized in Table 4.

The Wisconsin Model

Wisconsin, the first state to devise a comprehensive plan for collective bargaining, established the bargaining unit structure in the enabling act. This approach has not been emulated by many other states even though most of its intended purposes have been achieved. Hawaii is the only other state we know of which has followed the Wisconsin model. Pertinent sections of the Wisconsin act are:

> (a) It is the express legislative intent that in order to foster meaningful collective bargaining, units must be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a statewide basis with one unit for each of the following occupational groups:
>
> 1. Clerical and related
> 2. Blue collar and nonbuilding trades
> 3. Building trades crafts
> 4. Security and public safety
> 5. Technical

TABLE 4

BARGAINING UNITS FOR STATE CORRECTIONAL EMPLOYEES IN SIXTEEN STATES

California	No bargaining units
Connecticut	Currently being established
Florida	Currently being established
Illinois	Agency bargaining unit - Department of Corrections' employees
Indiana	Currently being established
Louisiana	Agency bargaining unit - Department of Corrections' employees
Massachusetts	Statewide bargaining units
Michigan	No bargaining units
New Jersey	Statewide bargaining units
New York	Statewide bargaining units
Ohio	Agency bargaining units - Department of Rehabilitation and Correction's employees
Oregon	Institutional bargaining units - Employees at each institution within the Corrections Division form a bargaining unit
Pennsylvania	Statewide bargaining units
Rhode Island	Agency bargaining units - Department of Corrections' employees; also statewide bargaining units
Washington	Agency bargaining unit - Department of Social and Health Services' institutional employees
Wisconsin	Statewide bargaining units

6. Professional

   a. Fiscal and staff services

   b. Research, statistics and analysis

   c. Legal

   d. Patient treatment

   e. Patient care

   f. Social services

   g. Education

   h. Engineering

   i. Science

(am) Notwithstanding par. (a), the legislature recognizes that additional or modified statewide units may be appropriate in the future. Therefore, after July 1, 1974, the employer or employee organizations may petition the commission for the establishment of additional or modified statewide units. The commission shall determine the appropriateness of such petitions, taking into consideration both the community of interest and the declared legislative intent to avoid fragmentation whenever possible.

(b) The commission shall assign eligible employees to the appropriate statutory bargaining units set forth in par. (a).

. . .(d) Although supervisory personnel are not considered employees for purposes of this subchapter, the commission may consider petitions for a statewide unit of professional supervisory employees and a statewide unit of non-professional supervisory employees, but the certified representatives may not be affiliated with labor organizations representing employees assigned to the statutory units set forth in Sect. 111.81(3)(a). The certified representatives for supervisory personnel may not bargain on any matter other than wages and fringe benefits as defined in Sect. 111.91(1).[2]

Although collective bargaining authority has existed in Wisconsin for ten years, no unions have been certified to represent the supervisors or the professional subunits for fiscal and staff services.

Departmental Bargaining Units in Corrections

Almost every correctional administrator, both with and without a union contract, expresses strong preference for a departmental bargaining unit, as opposed to the multiplicity of unions involved in horizontal bargaining units.

Departmental Unit in Illinois

In Illinois, departmental or vertical bargaining units have been established on the basis of similarity of jobs. Classification plan job titles in the corrections budget included the typical titles--correctional officer, clerk, carpenter, cook, storekeeper, etc. These all became related by adding "correctional" in front of each title (i.e., correctional clerk, correctional carpenter, correctional cook, correctional storekeeper, etc.).

It remains to be seen whether or not the Personnel Department will continue to treat these as distinct correctional classes or special working conditions and selective certification basis for the general classes of clerk, carpenter, cook, storekeeper, etc. The decision may have considerable impact on the employees in these classes and the state position classification plan as a whole.

Departmental Unit in Washington, D.C.

A variation of the departmental unit is found in Washington, D.C., where the bargaining unit is defined as "all employees of the Department . . . excluding professional, managerial and supervisory employees and employees engaged in personnel work of a non-clerical nature."

Under the contract, however, the ". . . Union is the exclusive representative of all employees . . . and recognizes its responsibility of representing the interest of all employees without discrimination and without regard to membership in the union."

In this contract, correctional sergeants are considered non-supervisors. Only nonsupervisors are eligible to hold elective offices in the union. No unusual problems have been reported under this contract which was first signed on 14 October 1969 and renegotiated on 16 November 1971. Since that time, a union security clause was added providing a service charge to the union for all employees who are not union members. Representation was limited to members and to those who paid the service charge.

Multiple Unit Representation

In states where several employee bargaining units are represented by the same union, some of the problems of fragmentation are eliminated by negotiation of a "master agreement" covering all of the separate units. A separate portion of the agreement covers issues particular to each unit. These individual agreements often are appended to the printed master agreement for the convenience of both management and employees.

In nearly every organized state correctional system, regardless of the number of bargaining units, the unit which includes correctional officers is the largest. There are always sufficient employees for this unit at each institution so that the unit usually can be subdivided into institutional locals. This will not always be the case for the units representing the other classifications, which will sometimes form locals on a regional basis.

Each local will have its own president, vice presidents, and shop stewards, and each is expected to take care of its own relationship with the prison. Professional staff rom the union are dispatched to aid local officers if they request assistance. Thus, locals can and do "negotiate" informal agreements with their prison superintendents whenever they choose. Such informal agreements are developed to make mutually acceptable modifications of the strict rules on seniority assignment, overtime, and other matters. Informal agreements, however, cannot be grieved in their breach; they simply are not recognized by state union officers and the state administration.

IMPACT

Bargaining unit formation is more of a political or administrative "art" than a "science." Further innovation in this area can be expected in the next several years.

In some large states, bargaining units have followed relatively classical lines. Because state prisons include so many occupations on their staffs, prison superintendents may have to deal with twelve to twenty different union locals. Generally, however, one union dominates the others, representing 75 to 85 percent of all state employees. Thus, it is not uncommon for most units to be represented by the same union.

A case could be made for establishing a single corrections bargaining unit for all nonsupervisory employees as was done in Illinois. It is still too early to evaluate the advantages and disadvantages of such a bargaining unit structure.

Generally, the correctional officers union will dominate other prison employee groups in negotiations and in contract administration. This will be true whether the correctional officers are represented by their own union or by a more comprehensive union in which their members are predominant.

References

1. Pennsylvania Public Employee Relations Act, Sec. 604.
2. Wisconsin State Employment Labor Relations Act, Ch. 612, L. 1966.

Related Issues

All Issues in Chapter I

2.19 - Retirement Benefits

3.00 - Emergency Plans Related to Strikes and Job Actions

1.02 COLLECTIVE BARGAINING NEGOTIATIONS

Issue: How should the corrections department be represented in the bargaining process? Can the impact of specific provisions be assessed prior to agreement to them? How is bargaining affected by the bargaining unit structure?

PRINCIPLES FOR ADMINISTRATIVE ACTION

The negotiation of collective bargaining agreements to cover all employees within a state department of corrections is complex. Multiple organizations exist on both sides of the bargaining table. State correctional employees often are included within more than one bargaining unit and are represented by more than one employee organization. In order to develop contracts covering correctional personnel in a particular jurisdiction, state management representatives must negotiate with several different bargaining units, and unions. Further complicating the negotiations, state legislatures, courts, labor relations neutrals, public employee relations commissions, and the general public are, to some degree, participants in the process.

Employer Organization for Collective Bargaining

In all of the states researched with comprehensive public sector collective bargaining, a designated department or division is charged with negotiating agreements with state employee organizations. Although the titles of these divisions or departments vary, in a majority of cases they are referred to as an "office of employee relations." The exact placement of these offices within the state governmental hierarchy also varies, but two models are predominant. In the states of Florida, Indiana, Massachusetts, Pennsylvania, Rhode Island, and Wisconsin, the Office of Employee Relations is a division of the state's Department of Administration. State departments of administration generally report to the governor and have policy-making, compliance, and review functions with respect to budgetary and personnel matters of the executive branch. In the second organizational model, the office of employee relations reports directly to the governor. This pattern is apparent in Illinois, New York, New Jersey, and Oregon, where the Office of Employee Relations is located within the Executive Office of the Governor.

In the states referred to above, the employee relations office is responsible for negotiating all labor relations agreements with state employee bargaining units. In such negotiations the employee relations office represents the various state departments as chief negotiator for contracts covering employees under their jurisdiction. The trend toward development of statewide rather than agency bargaining units has meant that the employee relations office most often negotiates collective bargaining agreements which cover employees of more than one state agency. For example, a negotiated contract between the New York State Office of Employee Relations and the

Administrative Services Bargaining Unit would cover clerical personnel throughout the state service, regardless of the agency in which they work.

In three states (Louisiana, Ohio, and Washington) which allow only nonwage collective bargaining for state employees, the primary responsibility for collective bargaining is structured quite differently. In these states, bargaining units have been determined essentially on an agency basis, and primary responsibility for correctional employee collective bargaining rests with the agency director and his appointed representatives. In Louisiana, the director of the Department of Corrections and two subordinates negotiated the department's first contract with correctional employees in spring 1975. In Ohio, representatives of the director of the Department of Rehabilitation and Correction negotiate collective bargaining agreements with correctional personnel subject to the director's approval. In Washington State, representatives of the secretary of the Department of Social and Health Services negotiate collective bargaining agreements covering personnel who are employed at the 24 state institutions under the jurisdiction of the secretary.

Management structure has important implications for collective bargaining. In states with comprehensive collective bargaining for state personnel, the chief management negotiator usually is from an office of employee relations organizationally located within either the executive office of the governor or a state department of administration. Those responsible for negotiating collective bargaining agreements covering correctional personnel thus have no formal operational responsibility within a correctional agency, nor are they organizationally responsible to the director of a correctional agency.

In negotiations, the responsibility of state negotiators is to maximize political and program benefits for their employer--the governor. In addition, the government negotiator relates to and relies on a constituency of labor relations professionals for support and advancement in this rapidly evolving and growing field. These two facts are extremely important. The concerns of the state's negotiator in negotiating with bargaining units which include correctional employees are broader than and different from those of a director of a department of corrections. As a result, it is possible for a state's negotiator to enter into collective bargaining agreements which, while they effectively respond to the governor's total program and political needs, have a significantly negative impact on correctional programs.

There are other reasons for the negotiation of contract items with potentially adverse effects on the operation of correctional agencies. First, state labor relations negotiators generally are unfamiliar with operational factors unique to correctional agencies. And although attempts may be made to consider correctional administration concerns during the negotiation process, communications tend to break down under the stresses of final contract negotiations. Input from agency administrators is reduced as the state's negotiator interacts with his superiors in the determination of final management positions. Also, correctional administrators characteristically have been unconcerned about or even unaware of the significance of the bargaining process until it is over.

Where collective bargaining units are organized horizontally, or statewide, reliance on a state negotiator could be considered the most reasonable approach since it allows for the implementation of statewide labor relations policy and assists in the equalization of employee benefits throughout the state. However, problems for management of operating agencies may arise under this arrangement. Occasionally the state negotiator has entered into collective bargaining agreements with employee groups without the knowledge or against the wishes of the correctional administrator. Where this has happened there often has been a significant impact on the operation of the state's correctional facilities. Three cases will assist in reinforcing this point:

> (1) In early 1971, just months prior to the tragic riot at Attica State Prison in upper New York State, the new director of the New York State Department of Correctional Services was faced with the employee organization bargaining demand that all correctional officer assignments, both specific post assignments and shift assignments, be based on a seniority bidding system. The director, feeling that he and his superintendents could not adequately administer the state's prisons under such a contract provision, informed the state's chief negotiator, the director of the Governor's Office of Employee Relations, that he would accept a strike rather than agree to that demand. The director of the Department of Correctional Services then proceeded to implement a strike contingency plan and notified his superintendents that a strike by correctional officers was imminent. On the last evening of negotiations prior to the scheduled correctional officers' strike, the director was called by the state's chief negotiator to the bargaining table.

Unable to reach a resolution with the union, the director left the negotiations table and notified staff to expect a correctional officers' strike the next morning. Reportedly, in the early morning hours, the state negotiator, unknown to the director, discussed the situation with the governor and entered into a collective bargaining contract with the union which included a seniority bidding system for post and shift assignments. This action was taken without the approval of the director of the Department of Correctional Services. On waking in the morning, the director was informed that the union seniority job bidding demands had been accepted. The contract provision was to have the effect of significantly reducing the discretion of management to place correctional officers on posts and shifts based on correctional officer skills and program needs. The criterion for determining assignment to a specific job became seniority.

(2) In 1973, the Bureau of Labor Relations, a division of the Pennsylvania Department of Administration, entered into a multi-unit contract covering ten bargaining units represented by the American Federation of State, County and Municipal Employees (AFSCME). Correctional officers and psychiatric security aides composed one of these ten bargaining units. Included within this multi-unit agreement was a section that stated: "All employees' work schedules shall provide for a fifteen-minute paid rest period during each one-half work shift. The rest periods shall be scheduled whenever possible at the middle of such one-half shift. The employer, however, shall be able to vary the scheduling of such period when, in its opinion, the demands of work require such variance."[1]

Administrators of the Pennsylvania Bureau of Correction indicated that they had no prior knowledge of or input into the development of this contract provision. Whereas for most state agencies the implementation of fifteen-minute rest periods twice a day for each employee would not provide an undue scheduling and economic burden, the situation was quite different for the Bureau of Correction. The bureau found that it had neither the personnel nor financial resources to relieve correctional officers from such posts as the cell blocks and the perimeter towers for fifteen-minute rest periods twice every shift.

As a result of the bureau's inability to comply with this contract provision, AFSCME filed a grievance which subsequently reached binding arbitration. The arbitrator found for the employees. The decision required that the commonwealth include in the work schedules of correctional officers two fifteen-minute rest periods to be taken away from their posts. In addition, those correction officers who had been required to remain on duty during their rest periods were to be compensated an appropriate rate of overtime pay retroactive to the date of the initial grievances. Since the Bureau of Correction was still unable to comply with the contract provisions because of a lack of resources and scheduling difficulties, Pennsylvania negotiated an agreement with the union that correctional employees' pay would be raised one state pay grade in lieu of the rest periods.

The arbitration decision and contract provision buy-out cost the Bureau of Correction approximately $1.4 million in fiscal year 1973-74. However, the salary payments to correctional personnel were not made until fiscal year 1974-75 and came out of the bureau's normal $48-million operating budget for that year. Of course, in addition to the one-time cost, the bureau continued in subsequent years to have increased salary expenditures due to the buy-out provision of increasing correctional employees' wages one state pay grade.

Several important observations emerge from this example. The first concerns the ability of a state negotiator, without the knowledge of correctional administrators, to enter into contractual agreements with employee organizations which could have a profound effect on the operation of a correctional system. The program impact and economic cost of this current provision to the Bureau of Correction was not understood or known by the management negotiators in Pennsylvania.

Second, the Bureau of Correction was offered no budgetary relief, either by the executive branch or by the legislature, in terms of increased personnel positions or additional salary appropriations in order to implement this contract provision. Already in an exceedingly tight budgetary position and faced with increasing prison populations, the Bureau of Correction absorbed the arbitration award and increased salary expenditures of almost $1.4 million out of its 1974-75 operating budget.

In order to absorb this unbudgeted expense, the bureau was required to reduce program activities, to leave unfilled budgeted personnel positions, and to use correctional personnel overtime when the reduced staffing became critical. The problems caused by the rest period contract provision were enormous. The director of the Bureau of Correction was eventually fired, reportedly for poor financial management.

> (3) In December 1975, Illinois' chief labor relations negotiator, from the Executive Office of the Governor, negotiated a collective bargaining agreement with AFSCME covering employees within the Illinois Department of Corrections. Among other economic provisions, the contract called for an average 7 percent pay increase for state correctional personnel. Estimates of the total cost of the collective bargaining agreement ran as high as $4.5 million. The day after the contract was signed, word came from the governor's office to the director of the Department of Corrections that it did not appear that the legislature could approve funding for the wage increases and that the department would have to finance out of its current operating budget any increased costs resulting from this collective bargaining agreement.
>
> The director and his appointed superintendents were required to curtail and cut back on programs and services in order to finance the contract provisions. Faced with staggering population increases, antiquated facilities, and inadequate educational, health care, and rehabilitative programs for prisoners, the Department of Corrections was forced to tighten its belt even further.
>
> The situation in Illinois is complex. The governor, facing a primary election which he eventually lost, was seeking support from organized labor. The framework for collective bargaining was not the result of legislative action, but rather a gubernatorial executive order. Thus, the state legislatures had not approved collective bargaining for state employees. The collective bargaining agreement was signed in the middle of a fiscal year, effective immediately, and thus was out of step with the normal state budgetary procedures.

The examples above do not necessarily imply that changes in job assignment procedures in New York State were undesirable; that a rest period twice a shift for Pennsylvania correctional employees was totally inappropriate; or that correctional employees in Illinois did not deserve or require a wage increase. The important points relate to the nature of the collective bargaining process as it has evolved in many states. First, some decision-making authority has shifted from the correctional administrator to the state's chief labor relations executive, which may cause serious problems for the operation of correctional programs. Second, the bargaining process tends to force reallocation of correctional resources to finance the negotiated contract, without regard for the needs and plans of the correctional service and without such legislative review as is undertaken for expenditures planned through the state budget.

With bargaining units which cross state agency lines, the placement of negotiating authority for the state in an office of employee relations makes administrative sense for a number of reasons. However, three potential problem areas must be addressed through the administrative policies discussed below.

Three Administrative Policies Needed

First, some arrangements should be made for timely meetings and communications between the office of the state negotiator and the directors of state agencies. The corrections commissioner should be able to suggest and to react to alternate collective bargaining positions and contract clauses. Second, an appropriate management dispute resolution procedure should be developed through which conflicts between agency administrators and the state negotiator can be resolved. This may require the creation of a process of appeal to the governor of the state or his designee. Third, contract provisions must be adequately costed to determine additional budgetary appropriations needed. Such an analysis might take the form of an operational and fiscal impact statement which, if contested by an agency administrator, would be reviewed through the management dispute resolution process. Impact statements should allow for both the realistic costing of collective bargaining agreements and for the development of financial and operational relief for affected agencies.

The above suggested management procedures are intended to assist in unifying the labor relations and program philosophies of state government. The potential burden that fragmentation of authority can impose on operating programs clearly indicates a need for a dispute resolution process at the highest executive level of government to mediate conflicting labor relations and operating programs goals.

Labor relations management procedures also should be implemented at other organizational levels. For example, there is a need to provide for communications between prison superintendents and the director of the department of corrections with regard to the impact of potential contract provisions on the institutions.

Employee Organization for Collective Bargaining

Once bargaining units are determined, the selection of an employee representative organization begins. Most states which have enacted collective bargaining laws for state employees have provided for exclusive representation in bargaining and contract administration for the organization chosen by a majority of employees in the appropriate unit. Generally, statutory provisions indicate that once an employee organization is certified as the exclusive agent of a bargaining unit, its status cannot be challenged by another employee organization for a period of one year after certification or while there is a valid collective bargaining agreement in effect.

An employee organization can achieve exclusive representation rights in one of two ways: (1) the organization can submit evidence that it represents a majority of employees within a particular bargaining unit and can request voluntary recognition by the employer; or (2) if a question of representation exists, a public employee relations commission or its equivalent can conduct a confidential study to determine the desires of employees with respect to a representative organization.

Generally, a state or national union or association wins representation rights for bargaining units which include state correctional personnel. The union or association then has responsibility for contract negotiations with input from regional and local organizations. The contract, of course, is subject to eventual ratification by rank-and-file membership.

Patterns of development of state, regional, and local organizations vary. AFSCME, which represents more correctional officers than any other employee organization, generally structures institutional locals which are responsible to the state council either directly or through a regional organization. The state council is responsible for negotiations with the state employer representative.

State councils vary in terms of the numbers of employees and the types of bargaining units they represent. For example, in New York State, the AFSCME state council represents only the security bargaining unit which includes approximately 10,000 employees. In Pennsylvania, the council represents ten state employee bargaining units and approximately 76,000 state employees. In other states, the predominant situation is for the leadership of the state office of the organization to represent state employees at the bargaining table. Relationships between employee organizations and bargaining units can become quite complex. In Massachusetts, an alliance of AFSCME and the Service Employees International Union (SEIU) won representation rights for a majority of the eleven state employee bargaining units. These two AFL-CIO unions jointly negotiate at the bargaining table for the employees they represent.

In Pennsylvania, the AFSCME state council negotiates for ten statewide bargaining units through a process called multi-unit bargaining. The Pennsylvania AFSCME state council negotiates a master collective bargaining agreement for all the employees it represents, as well as appendices to the agreement with special provisions applying to employees in each of the separate bargaining units.

Multi-unit bargaining is a common practice. The AFSCME-SEIU alliance in Massachusetts engages in multi-unit collective bargaining. In New York State, although each of the Civil Service Employees Association's bargaining units has a separate contract, they are virtually identical and are the result of a multi-unit bargaining process.

In addition to multi-unit collective bargaining for state personnel, there also exists a process referred to as coalition bargaining. In coalition bargaining, employee organizations representing separate bargaining units jointly engage in negotiating a collective bargaining agreement.

Bargaining over different issues at different levels of the employer hierarchy is referred to as multi-tiered bargaining. The New York State Civil Service Employees Association has written into the contract for its four bargaining units that there shall be departmental and institutional bargaining over local employment issues in addition to statewide collective bargaining over general employee concerns.

There are advantages and disadvantages associated with multi-tiered bargaining. Faced with the departmental negotiation of local employment issues after economic negotiations have already concluded at a statewide bargaining table, the correctional administrator is at a disadvantage with respect to bargaining power since the important economic issues have already been resolved. On the other hand, in local negotiations the correctional administrator has greater control over the setting of management priorities for negotiations. Conceivably, there would be less chance of negotiating a contract clause without a full understanding of the potential impacts on departmental operations. From the employees' point of view, multi-tiered bargaining offers a second chance to attain bargaining demands not won in the state-level collective bargaining process.

IMPACT

The impact of inadequacies in organization and process may be particularly serious for the operating agencies since they must live with the changes virtually forever. On the other hand, if the unions fail to obtain a new policy or benefit, they can return to the contract renegotiation in two or three years and try again.

Especially onerous contract provisions, of course, can be reopened by correctional management if the political climate at the time will support this action. To assume such an active role, corrections management must depend primarily on administrative analyses which document the costs, delays, division of manpower, etc., resulting from a particular policy or procedure. A provision which alters the overall institutional program to the disadvantage of prisoners, for example, can be related to an effect on their post-release performance.

Reference

1. AFSCME Locals 467, 2497 and 2496 v. Commonwealth of Pennsylvania, Arbitration Opinion and Award on Grievances 73-744, 73-767, and 73-768 (hearings held 4 February 1974).

*Note: Pages 42-54 are taken from the MERIC final report, Prison Employee Unionism: The Impact on Correctional Administration and Programs, by John M. Wynne, Jr.

Related Issues

1.03 - Contract Evaluation

1.04 - Contract Ratification by the State Legislature

1.05 - Funding Contract Provisions

1.08 - Contract Renegotiation

1.03 CONTRACT EVALUATION

Issue: How should a proposed contract be evaluated? And who should undertake the evaluation? The correctional administrator? The legislature? Can the evaluation be concluded before approval?

PRINCIPLES FOR ADMINISTRATIVE ACTION

In private industry contract negotiations, both parties eventually arrive at a point where the cost of the package becomes crucial to reaching an agreement.[1]

Costing out contract provisions should also be undertaken in government agency negotiations. Several types of costs are examined in this process: (1) direct payroll costs (cost of work-paid time); (2) changes in costs which are a direct result of changes in the direct salary cost (retirement, disability leaves, sick leave, vacation, etc.); (3) nonpayroll costs; and (4) costs of non-work-paid time.

An example of an accounting form is shown in Table 5. This form should be completed by listing every existing benefit which costs something (e.g., clothing allowance, overtime, meals, military leave, holidays, and sick leave). The analysis of total changes can be extended to annual increase by function (custody, education, administration) and on a multi-year basis. Summary analysis also should include a table of prior year increases by combined categories (direct payroll, indirect payroll, nonpayroll).

TABLE 5

COSTING OUT CHANGES IN CONTRACT TERMS

Changes in Costs	*Increased Cost*
1. Direct payroll—annual	
Straight time earnings—5% general increase/1,000 employees	$ 400,000
Premium earnings—night-shift differential—62.5¢ an hour	220,000
Overtime—overtime cost increased by 1½ times rate	60,000
Total increase in direct payroll costs	680,000
2. Added costs directly resulting from higher payroll costs—annual	
Added state contribution to retirement fund 1,000 employees: 5% x $400,000	20,000
Total additional direct payroll costs	20,000
3. Nonpayroll costs—annual	
Insurance—(a) increase state portion to health insurance	50,000
(b) increase state portion to life insurance	100,000
Miscellaneous	
Tuition reimbursements (addition)	6,000
Suggestion awards (addition)	3,500
Personal safety equipment (addition)	12,000
Total additional nonpayroll costs—annual	171,500
4. Changes in non-work-paid time	
Paid lunchtime—½ hour at straight time	605,000
Paid time off for union activity—new 1 hour a week for 20 shop stewards x $5.80 shop steward average new wage	6,032
Paid time off for safety or training—20 hours per man added x 1,000 employees x $5.50 average	110,000
Total change in hours paid for but not worked—annual	721,032
5. Financial data derived from costing out (Items 1-4, above)	
Total increase in contract costs (Item 1 + Item 2 + Item 3 + Item 4)	1,592,532
Average total increase in contract costs per employee payroll hour Total increase ÷ 220,000 hours	7.24
6. Projection of benefits for other employees (300 supervisory and other unrepresented employees)	
(a) Pay increase (5%), or $410 per employee, x 300 equals annually:	123,000
(b) Overtime pay not allowed supervisors, but for 180 other nonsupervisors amounts to:	43,200
(c) Retirement fund contribution by state for the 300 employees is similar:	6,150
(d) Paid lunchtime would be the same for 190 other employees (including custodial supervisors):	125,000
(e) Health insurance improvements for 300 employees:	30,000
(f) All other benefits—none	--
1ST YEAR TOTAL:	327,350

In the example used, it is assumed that a medium-sized state corrections department has 1,000 employees composed of correctional officers and other line workers in crafts, blue-collar trades, and culinary services--all of whom are under a union contract. Sergeants and other supervisors are excluded.

Pay Increase: A 5 percent pay increase was negotiated for the 1,000 employees whose salaries were increased an average of $400 a year. Employees also received a night-shift differential of $5 for each shift which included normal work between the hours of 6:00 P.M. and 6:00 A.M. There are 200 employees who would be eligible for this benefit in an average working year of 220 days.

While no additional retirement benefits were negotiated, the base pay increase produces direct increases in the state's share of the retirement fund. This is calculated as a 5 percent increase in the state's share based on the gross amount of pay increases.

Overtime Pay: Overtime was authorized at the premium rate of 1½ times the regular rate for all work which had previously been paid at the straight time rate. For the previous year, actual overtime expenses raised 5 percent for the pay increase divided by 50 percent would indicate the new cost of the premium pay rate.

Insurance: Insurance costs to the employee were reduced, and the state's share was increased by $100 for each employee every year.

Tuition Reimbursement: State payment of tuition for part-time, off-duty, college-level education was provided.

Suggestion Awards: Employee suggestions adopted would be rewarded at the rate of 25 percent (versus 10 percent under the current plan) of the first twelve months' savings estimated.

Safety Equipment: Personal alarm signaling devices to be carried by correctional officers in housing and work areas will be provided to officers in 104 posts. At $65 each, in addition to fifteen area receivers at $200 each, the first year's cost will be $9,760. Service agreements with the supplier will increase this one-time annual cost to $12,000.

Lunchtime: Paid lunchtime for correctional officers not fully relieved during their shift for lunch was agreed upon at ½ hour a day (regular time). The 1,000 employees will receive approximately ½ hour additional pay for 220 days at $5.50 an hour average new wage ($605,000).

Training Time: Allocations were made providing for 20 hours training for each employee on off-duty time (1,000 x $5.50 x 20 = $110,000 annually).

Nonunion Employees

The cost analysis presented above introduces the related issue of nonunion employees, the largest group being the supervisory and management workers, but which also may include other small nonunion groups.

It is likely that management would insist on maintaining desirable internal pay relationships in the salary and pay plan, as well as extending comparable increases to other closely related employees--all of whom have some custodial responsibilities. To this extent, the union would be bargaining for all of these other employees.

Management undoubtedly would contend that these employees were not discussed at the bargaining table and that the corresponding increases are only the consequences of such bargaining, subsequently determined in the interest of equity and to maintain morale in these other groups. The union probably would hold that such increases were not necessarily justified since supervisors and managers had other compensations, including higher salaries, and that it would be unfair to attach to costs of what the union has negotiated the costs of what management has added for other employees. Management would most likely have to agree that the union position is reasonable and would separate the contract costs from costs recommended for other employees when presenting the contract for legislative ratification. Nonetheless, this is a matter of technique. When management later makes its case for similar benefits for the supervisors of employees who have had such a contract approved, the reasons will be obvious to both those requesting it and those approving it.

Other Evaluation Criteria

Over the period of contract administration (usually two or three years), the corrections agency should keep its own records, aggregated by department and by facility, for each bargaining unit group on the following items:

Grievances filed:

Grievance area (shift assignment, overtime, etc.):

Number of employees involved:

Grievances settled at steps 1 and 2 (immediate supervisor and superintendent):

Number to step 3 (commissioner):

Settled at step 3:

Pending at step 3 over 30 days:

Number to step 4 (central employee relations director):

Settled at step 4:

Pending at step 4 over 30 days:

Pending at step 4 over 60 days:

Pending at step 4 over 90 days:

Number to step 5 (arbitrator, fact-finder, etc.):

Pending at step 5 over 60 days:

Pending at step 5 over 120 days:

Pending at step 5 over 6 months:

Pending at step 5 over 12 months:

For all grievance steps, the analysis also should show the outcome, whether rejected, approved, or compromised.

Step 5 settlements should be aggregated to show costs of arbitration (department) share and costs of settlements.

The data may be further analyzed for management's internal use. Which superintendents seem to be having the most difficulty? Which have the least? Why? Which bargaining units have the most grievances and what are the differences by institution? Why? In Many ways, grievance procedures formalized under the union contracts are a very useful management tool for evaluating performance, identifying problem areas for management review, planning training programs to improve performance, and dealing positively with controllable deficiencies, etc.

Such information also is useful for each superintendent's self-appraisal and use in his executive staff considerations, as well as in his periodic meetings with union local officers.

At the department level, the data also may be helpful for review with the state labor relations director. How does the department compare with others? What are the problems in delay of resolution at step 5? What could be done?

Finally, problems of contract administration are a proper subject to take up at contract renegotiations. At this time, data collected on special problem areas also could be an important negotiating issue. Some contract provisions may require more precise clarification in light of past expereince. For example:

> Damaged clothing: The employer agrees to pay the cost of repairing eye glasses, watches, or articles of clothing damaged in the line of duty (up to $50).[2]

It may be necessary to define "line of duty" and to specify how it is verified--by incident or by accident reports--in order to reduce possible abuse if the amount of such claims is excessive compared to the previous year or varies widely from institution to institution. This provision also may present problems for prison superintendents if it does not pertain to other bargaining units in the prison.

Funding New Benefits

Financing negotiated improvements in benefits should occur during and at the end of the negotiating sessions by feedback from each department represented at the bargaining table. The legislative use of financial analysis in contract ratification is discussed in greater detail in the following section (Issue 1.04).

Many contract provisions would have no impact on program operation if their new costs were identified and approval made contingent upon appropriation of additional funds specifically for the financing of the provisions.

Any new costs of contract provisions may present serious operational problems if they are too much for the existing budget or inadequately provided for in the new budget. An example would be the new administrative costs of grievance procedures typically found in collective bargaining contracts. While the number of grievances submitted and the extent of staff organization prior to the grievance procedure are significant, a typical prison and department will require at least one new staff position at each level. Unless new staff are provided, the grievance procedure will draw staff time from other assignments such as personnel transactions, timekeeping, accounting, finance, training, and related functions.

In Wisconsin, one new cost item in the 1977-78 contract called for the full-time assignment to the union of two employees of the Division of Corrections (to be selected by the union). The director's office estimated this annual cost to be $30,000 in direct and fringe benefit costs. If the positions are replaced by other employees on overtime, the annual cost would be nearly $45,000.

While contract provision evaluation should be part of the initial contract negotiation and ratification process, it is most feasible to conduct such an evaluation during the period of administration under an approved contract.

IMPACT

The effects of collective bargaining--both generally and in terms of the provisions emerging from contract negotiations and changes made outside the contracts--are: (1) to make correctional operations more expensive; (2) to limit management's authority and accountability; and (3) to alter the allocation of resources to various administrative, security, and treatment programs. The full impact of the collective bargaining process and of the contracts or agreements negotiated should be made much more visible.

Since impact information is needed by correctional administrators for management purposes, the development of contract evaluation methods and techniques need not await a request by the legislature or other agencies. However, the quality of the data collected will be enhanced considerably if the legislative ratification process requires such assessment.

References

1. Reed C. Richardson, "Positive Collective Bargaining," in Dale Yoder and Herbert G. Heneman, Jr., eds., *Employee and Labor Relations*, American Society for Personnel Administration Series, Vol. 3 (Washington, D.C.: Bureau of National Affairs, 1976), p. 7-134.

2. Agreement Between the State of Wisconsin and AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO, effective 14 September 1975 to 30 June 1977.

Also see *A Method to Cost-out Contract Proposals*, a Training Module for School District Personnel, University of California, Berkeley, September 1976. This is an outstanding reference work developed through an Intergovernmental Personnel Act grant from the U.S. Civil Service Commission.

Related Issues

1.02 - Collective Bargaining Negotiations

1.04 - Contract Ratification by the State Legislature

1.05 - Funding Contract Provisions

1.08 - Contract Renegotiation

1.04 CONTRACT RATIFICATION BY THE STATE LEGISLATURE

Issue: Should state legislatures ratify state-union contracts? How is this accomplished in various states?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Public sector collective bargaining legislation should include provisions which will discourage use of the system for highly partisan political advantage. To accomplish this, the negotiating process must be provided with greater insight concerning its methods and results; executive approval of proposed contracts should be subject to objective financial impact analysis; the contract and analysis should be published on submission to the legislature which shall be required to hold public hearings on the contract; and there should be a reasonable period between contract publication and public legislative hearings. The legislative review should not be a second tier of negotiation, but instead a process of complete ratification or rejection with valid reasons. It also may be desirable to restrict the governor's powers to establish collective bargaining by executive order.

Organizational Background

Aside from the various interested parties included within either employee organizations or the executive branch of government, perhaps the most important party to state employee collective bargaining is the state legislature. Not only have state legislatures passed collective bargaining legislation in 25 states, but they also are the party responsible for enacting any legislation or appropriating any funds necessary for the implementation of a collective bargaining agreement. In all of the states which have enacted comprehensive collective bargaining legislation, the power to appropriate funds to meet the provisions of a state employee collective bargaining agreement still rests with the state legislature. In no state has the legislative body delegated its appropriation authority to the executive branch.

Although ultimate appropriation responsibility rests with state legislature, differences among the states exist in terms of the degree of legislative involvement in the ratification of state employee collective bargaining agreements.

Examples of Ratification Policy

In Pennsylvania, collective bargaining legislation mandates that any provisions of a collective bargaining contract requiring legislative action shall become effective only if such legislation is enacted. This includes not only budgetary appropriations, but also other areas requiring legislative approval.

Collective bargaining legislation in Massachusetts indicates that the employer must submit to the legislature a request for an appropriation necessary to fund the cost items contained in any collective bargaining agreement. If the legislative body rejects the request for such an appropriation, the cost items are returned to the parties for further bargaining.

In Florida, upon execution of a collective bargaining agreement, the chief executive is required to request the legislative body to appropriate amounts sufficient to fund the provisions of the collective bargaining agreement. If less than the requested amount is appropriated, the labor relations legislation mandates that collective bargaining agreements shall be administered by the chief executive officer on the basis of the amounts appropriated by the legislative body. Unfunded or partially funded contract provisions are not sent back for additional collective bargaining; instead, the contract remains in effect at the reduced level of funding authorized by the legislature.

In Wisconsin, collective bargaining agreements between the executive branch and any certified labor organization are considered tentative until they have been submitted to a joint legislative committee on employee relations. This committee is required to hold a public hearing before approving or disapproving the tentative agreement. If the committee approves, it introduces any legislation required for implementation of the collective bargaining agreement. If either the joint committee or the full legislature fails to approve legislation required to implement the collective bargaining agreement, the tentative agreement is returned to the parties for renegotiation. Under the Wisconsin statute, no portion of a collective bargaining agreement can become effective separate from the entire agreement. The legislative review portion of the process seems to have been of less scope than the legislation implies.

Political Aspects of Ratification

Although variations are found in specific procedures and in the extent of required legislative approval of state employee collective bargaining agreements, state legislatures play an important role in the collective bargaining process. After a collective bargaining agreement has been negotiated with an employer representative, employee organizations often lobby to ensure approval of those contract provisions requiring legislative action. Lobbying also occurs between appropriate members of the executive branch and the members of the state legislature.

The economic costs of government and government employee benefits in some cases have reached a high level of public visibility. Different types of economic settlements are characterized by varying degrees of visibility. Less visible settlements can reduce the political costs of the agreement to elected officials; highly visible settlements can increase such costs.

The most visible economic settlements are cost-of-living or general salary increases. These settlements require legislative approval and receive considerable publicity. Other types of economic settlements are less visible to the public. Some of these require direct legislative approval; others do not.

An example of a settlement requiring direct legislative approval is the provision of early public safety retirement benefits for correctional officers. The placement of correctional officers in an early public safety retirement category, which has occurred recently in many state jurisdictions, is a significant economic gain for this employee class. Although not necessarily included as a contract provision of collective bargaining agreements, such a change in retirement status is a result of negotiating and lobbying by an employee group with the executive and legislative branches of government. The tendency to include correctional officers in early public safety retirement is an affirmation of the power of correctional officer organizations.

The general idea behind early public safety retirement is that law enforcement officers are less able to protect the public after reaching a certain age (in most jurisdictions, age 55). The motivation for placing correctional officers in early public safety retirement seems to be their lessened ability to protect themselves from prisoners after a certain age. Whether or not this is a valid argument, it is a questionable use of the public safety retirement concept specifically for the benefit of the correctional officer class. Many other employee groups (e.g., teachers, medical personnel, and shop instructors) also have direct inmate contact in institutions, yet these prison employment classifications seldom are included in early retirement provisions.

In addition to economic settlements which require direct legislative approval, there also are low visibility economic settlements which require only indirect legislative approval. In New Jersey, in lieu of a highly visible pay increase which would have come under legislative and public review, a contract provision recently was entered into which required that correctional officers be paid time and a half for the overlap period subsequent to the ending of each shift. Prior to this contract provision, correctional officers were not paid for this period. This additional eighteen minutes of work each day paid at the overtime rate resulted in an increase in correctional officer pay approximately equal to the employees' wage increase demands.[2]

At issue here is the integrity of the collective bargaining process. Granting salary increases by changing a work rule and hiding increased salary expenditures within an increased overtime account clearly subvert the integrity of the system of checks and balances provided within most legal frameworks for public administration as well as public agency collective bargaining.

Unfortunately, such administrative manipulation often is considered good management in the public sector. In a political environment of adversary relationships, the pragmatic public manager often attempts to implement program and political goals by taking advantage of the legal and administrative loopholes inherent in any organizational system. The recent ascendancy of an orientation which stresses program implementation rather than integrity of process is in need of searching review.

Minimizing Visibility in Contract Ratification

In establishing the process of legislative ratification, legislatures generally have either neglected their own policy or have been excessively trusting of the executive branch. The result has often been less than informed approval of proposed collective bargaining agreements.

Both the union and the state negotiator would prefer little publicity of new contract provisions. Accordingly, with low visibility, labor's supporters are pleased that a new contract has been concluded, whereas both labor's antagonists and the governor's political opponents can capitalize on specific "generosities" of the contract.

Low visibility is achieved by a number of means designed to assure minimum review by the legislature and minimum media coverage of the specific provisions. These include:

- Keeping the contract provisions out of the governor's budget for the forthcoming year. This is done by prolonging the negotiations so that they are not concluded until the budget has been passed, or at least until it is too late for the results to be included in the budget review.
- Arranging, if possible, for the union contracts to be reviewed and approved not by the regular budget committees (e.g., ways and means, appropriations), but by a group such as a joint committee on state employee relations whose majority membership consists of legislators friendly to organized labor.
- Obfuscating the costs by (1) not calculating the expenses of noneconomic matters, such as more sick leave, vacations, holidays, and time off for union business; (2) understating direct costs by providing only partial-year funding for the initial year of the contract; (3) excluding indirect costs, such as retirement, work space, equipment, and other benefits required for additional employees; and (4) failing to estimate new manpower costs (including management time) needed for implementation of a new procedure, such as seniority assignment bidding.
- Holding nonpublic legislative committee hearings without prior public notice and without publication of the proposed contract for public review before the hearings.

- The governor directing the state agency involved to "absorb" all or some of the new costs of the contract. When this is done, the governor's statement that all additional costs will be met by management improvements, by cutting out the "fat" in the administrative budget, and other prudent economies usually suffices to lull legislative committee interest.
- Presenting, if possible, the entire contract to the legislature one or two days before scheduled adjournment. The contract must be approved before adjournment; otherwise, the governor may call the legislature back into an emergency session.

Labor Relations Neutrals'as Ratification Surrogates

Third-party neutrals also play an important role in the public sector collective bargaining process. These labor relations professionals, who stress their independence from both management and labor, frequently act as fact-finders or in a quasi-judicial role in settling disputes between employers and employees. In the private sector, their primary involvement has been in the settlement of rights disputes. Commonly called grievances, rights disputes usually involve the interpretation or application of an existing collective bargaining agreement. In the public sector, labor relations neutrals increasingly are becoming involved in the resolution of interest disputes or disputes over the provisions of a collective bargaining agreement which is in the process of negotiation.

Interest dispute resolution procedures have been developed in the public sector partially as an attempt to find an alternative to public employee strikes. In the private sector, the employee strike represents the ultimate power of the employee to pressure management into reaching a mutually acceptable collective bargaining agreement. In the public sector, only in the states of Hawaii, Pennsylvania, Vermont, and Alaska are public employees given even a limited right to engage in strike activities.

Interest dispute resolution techniques range from third-party mediation, fact-finding, and voluntary or compulsory arbitration to combinations of mediation, fact-finding, and arbitration procedures. In most of the states studied, some form of impasse resolution procedure has been established for state employee interest disputes. Virtually all jurisdictions provide for some form of mediation followed by fact-finding. Connecticut and New Jersey have provisions for voluntary arbitration. The Washington State Personnel Board has binding authority over nonwage collective bargaining disputes. In New York and Florida, the state legislative body is specifically designated the final arbitrator of state employee contract negotiation impasses, after mediation and fact-finding have occurred.

There also exist the binding arbitration provisions of collective bargaining legislation in Oregon, Pennsylvania, and Rhode Island. Rhode Island legislation sets forth provisions for binding arbitration on interest disputes in which the arbitration decision is binding on all contract issues except wages. Such arbitration decisions are advisory only with respect to wage settlements. In Oregon and Pennsylvania, special provisions are included within the labor relations legislation for public safety employees, including correctional officers. Compulsory binding arbitration, subject to eventual legislative approval, is mandated for correctional officer collective bargaining impasses in these two states.

One of the areas of conflict surrounding compulsory arbitration concerns the delegation of legislative and executive authority to private individuals. Court challenges on this matter in the states of Michigan, Pennsylvania, Rhode Island, and Wyoming have been rejected on the grounds that ". . . the arbitrators constitute public agents or state officers when carrying out their arbitration function, or that the presence of standards in the statute for the guidance of the arbitrators is sufficient to overcome the delegation argument."[1]

Nevertheless, the use of arbitration procedures clearly results in a further reduction of the correctional administrator's authority, as well as that of the legislature. Particularly in the case of compulsory arbitration, the correctional administrator is mandated by law to operate his agency under the contract provisions of a collective bargaining agreement determined by a neutral third party. This third party, of course, does not have to face the operational consequences of contract provision decisions and may not understand the operational environment of a correctional institution.

The appropriateness of binding arbitration as an impasse procedure in the public sector also is widely debated. Differences of opinion exist not only between management and employee groups, but also within each group. The essential issues are whether or not public employees should have the right to strike and whether or not arbitration is preferable to public sector employee job action. As already noted, some states which grant state employees a limited right to strike do prohibit strikes by correctional officers. The legislative compromise provided to correctional officers in lieu of the right to strike is compulsory binding arbitration. Yet prohibitions against strike activities by correctional officers and the development of other dispute resolution mechanisms have not always prevented correctional officer strike activities. And compulsory binding arbitration for state employees is binding only to the extent that the state legislature enacts appropriate legislation covering contract items requiring legislative approval.

A number of alternatives are being tried throughout the country in an effort to develop more effective dispute resolution procedures for public sector bargaining. In a unique experiment taking place in Massachusetts, compulsory final offer arbitration is being used to settle police officer and fire fighter interest disputes. As final offer arbitration is implemented in Massachusetts, an arbitration panel is required to select either the final employer contract offer or the final employee contract offer in its entirety. In one sense, this process will tend to increase the likelihood that the conflicting parties will mediate their demands; yet it could result in some costly and inappropriate contract provisions which may severely hamper the operation of a public safety agency or ignore employee needs and rights.

IMPACT

The ability of the correctional administrator to fulfill his legal responsibilities for administering a state correctional system is diminished by the labor relations process. Unfortunately, as growing prison populations and budgetary constraints aggravate the problems of state corrections, and as the public becomes more concerned about the effectiveness of correctional programs, the authority of the correctional administrator to deal with major operational problems and policy issues is being reduced by fragmentation of authority over correctional operations. The courts, federal and state regulatory agencies, and labor relations professionals are making policy and operating decisions which affect the administration of correctional facilities. While this fragmentation of authority has resulted in some positive changes, there are significant problems with this mode of agency operation. The correctional administrator is now faced with the task of operating correctional agencies with decreasing administrative authority.

There are great temptations for governors to secure temporary political advantages by incurring the indebtedness of organized labor for their immediate or future political support. In one particularly dramatic case, at the governor's direction, the collective bargaining organization and procedure were suspended and a contract renegotiation was concluded by the governor's representative and a union negotiator behind closed doors. The contract resulting was viewed by state managers as extraordinarily generous to the union, and the governor was reelected some five months later. This was the first experience of the governor's representative with collective bargaining.

Other cases could be cited, but the one selected is especially pertinent. In this case, the state previously had established a participatory role in the bargaining process for the state legislature, through a legislative joint committee. Under the legislation, the committee was required to submit a confidential estimate of the maximum total budget increase which could be allowed as the combined cost of all matters negotiated. The concluded agreement would not be binding on the state unless approved by the joint committee. The department of finance was to determine by analysis the first and subsequent years' costs of the contract. However, there was no procedure or practice for a public legislative hearing on such contracts to be approved; no hearings were held in 1975.

The recommendation favoring restriction of the governor's powers to establish collective bargaining by executive order stems in part from experience with unsound, opportunistic, and abusive practices in cases where this was done. There are additional problems associated with collective bargaining authorized by executive order:

1. Only employees who are directly responsible to the governor's office can be included. Departments headed by independently elected executives and commissions whose members are appointed for terms usually are not eligible for inclusion under the executive order. Recently, nearly one-half of a particular state's employees were excluded from the executive order. One group of employees received consideration for pay and other benefits.

2. Since collective bargaining agreements involve new costs to the state, these should be subject to the legislative branch's approval through the appropriation process. This does not fully occur, however, if the new costs are covered by corresponding decreases in other areas or if only partial-year funding is provided for the first year. If this is not a deception to the legislature, it is at least a significant program and policy change which has not been adequately reviewed before implementation. The next governor and legislature may be surprised to find the subsequent year's budget obligated for considerably more than that of the preceding year.

3. While unions and employees at the time may be willing to take the risks, the fact remains that the next governor can abolish the executive order and all of the agreements, including any new benefits provided under the executive order bargaining. The legislature also can abolish or replace an executive order by legislation.

Reference

1. Benjamin Aaron et al., Final Report of the Assembly Advisory Council on Public Employee Relations, State of California, 15 March 1973, p. 216.
2. This scenario was repeated in 1976 when correctional officers were the only employee group to receive a full step pay increase by the device of further extending the shift overlap period.

Related Issues

1.03 - Contract Evaluation

1.05 - Funding Contract Provisions

1.05 FUNDING CONTRACT PROVISIONS

Issue: What can be done to discourage the funding of negotiated new employee benefits from the existing correctional department budget rather than from additional appropriations for this purpose?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Issue 1.02 identified three modifications of the state negotiating process required to overcome present difficulties. These recommendations were as follows:

1. Timely meetings and communications must occur between the office of the state negotiator and the director of the various state agencies.
2. An appropriate management dispute resolution procedure should be developed through which conflicts between agency administrators and the state negotiators over contract items can be resolved.
3. Contract procedures must be adequately costed prior to concluding an agreement.

Issue 1.03 pointed out the need for full and accurate costing of the state-union contract as a prerequisite to legislative consideration of contract ratification. Issue 1.04 dealt with the need for more formal legislative review and approval of new collective bargaining agreements.

The issue considered here deals with the need to more fully incorporate collective bargaining into the state budgetary process. In this manner, the highly political bargaining process will become more compatible with the separate powers of the executive and legislative branches. If the results of collective bargaining are identified as a budget expenditure component, these costs can be considered within the context of agency-wide operations and needs.

A separate, final step of negotiations, therefore, would be to include the cost of increased benefits as a budget item within the governor's budget submission. Budget reviews and resulting appropriations thus would determine the ultimate effectiveness of the new union contract provisions proposed by the governor. The cost of each benefit (or group of benefits) can be individually funded; those unfunded would remain unchanged until funded at a future date by budget supplementation or augmentation or in a subsequent fiscal year. Union lobbies, in concert with the governor's budget and employee relations offices, would keep unfunded provisions alive for funding consideration at every opportunity.

If the costs of negotiated benefits are submitted for budgetary review by the state legislature, these expenditures can be considered in the context of the total state correctional service and other state needs. Relative priorities can be set by the legislature. Increased costs of all procured items such as food, clothing and utilities, as well as the costs of institutional maintenance and prisoner rehabilitation programs, would be considered in conjunction with the costs of negotiated benefits, thus avoiding the need for cutbacks in institutional services to rpovide for the financing of employee benefits. The legislature may decide that in addition to review by established committees with jurisdiction over the correctional budget, union contract provisions must be reviewed by a standing committee on employee relations.

In addition to assessing the economic impact of the total proposed budget plan, the aggregate expenditure for personnel and other cost categories must be matched against state resources. Experience has shown that in the absence of such review and assessment, there has been a consistent pattern of erosion of the appropriation base for correctional services.

IMPACT

The recommended procedures would affect the contract negotiation and renegotiation schedule since the provisions would have to be incorporated into the governor's budget. The governor would be obliged to seek appropriateions to fund union contracts for which he was responsible, and thus would be less inclined to underestimate new contract costs or to deceive the legislature by departmental absorption of new costs without specifying exactly how the increased employee benefits would be financed.

Economic cost considerations would assume a larger role in public sector collective bargaining, although political costs and benefits would remain important.

Some union leaders and professional employee relations neutrals can be expected to object to these proposals. Their work becomes considerably more difficult as the bargaining process is embedded in the budgetary review process. Some state budget directors also express reservations on the involvement of their offices in the highly political negotiating process or its implementation through legislative ratifications with or without specific fiscal support by budget modification.

Related Issues

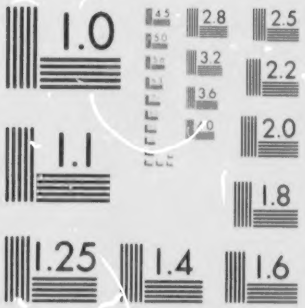
1.00 - Enabling Legislation

1.02 - Collective Bargaining Negotiations

1.03 - Contract Evaluation

1.04 - Contract Ratification by the State Legislature

2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1.06 CONTRACT ADMINISTRATION

Issue: What is involved in contract administration? How should it be carried out?

PRINCIPLES FOR ADMINISTRATIVE ACTION

What happens after the collective bargaining contract is finalized depends on the specific contract provisions, the representational characteristics of the union and its local elected officers, and the climate of management-employee relations in the institutions. In almost every case, the major contract provisions dealing with contract administration are (1) requirements to meet-and-confer on any matter of administrative discretion which could affect the health, welfare, and safety of the union membership; and (2) the grievance procedure.

A common component of all collective bargaining agreements for correctional personnel is the collective bargaining provision that sets forth an employee grievance process. Among the states studied, there are differences in the exact procedures used and in the areas of dispute which are eligible for resolution through the grievance process. In virtually all states, however, any grievance or dispute concerning the application, meaning, or interpretation of the collective bargaining agreement is eligible for such resolution, unless otherwise specified.

A common form of grievance procedure is a five-step process in which the final step is arbitration. In a five-step grievance procedure. the first step is the presentation of the grievance orally to the employee's immediate supervisor. The second step is an appeal in writing to the institution superintendent in the case of institutional employees, or to the administrator of an equivalent organizational unit in the case of other employees. If resolution at the second step is unsatisfactory, the third step is an appeal to the department or agency head. The final two steps are outside the administrative jurisdiction of the corrections department. The fourth step is an appeal to the state director of employee relations or to a person in a equivalent position, and the fifth step is arbitration by a third-party neutral.

Not all grievance procedures for correctional employees follow the five-step format. Some states, while having a grievance procedure ending in binding arbitration, do not have review by a state labor relations official prior to the arbitration process. In these states, an appeal to the agency director may be followed by arbitration with a third-party neutral.

Grievance procedures are described in greater detail in Chapter II (Issues 2.01 and 2.02). In this section, the primary concern is with the ways contract administration is affected by the existence of a grievance procedure mandated by a management-union contract.

The Grievance Procedure

If the corrections agency already has a grievance procedure prior to employee bargaining, the formal procedures of steps 1 to 3 will not be new or burdensome. However, a significant increase in the number of grievances can be expected, partly because of the availability of appeal to third parties at steps 4 and 5, and partly because there are many more areas of potential grievances under the union contract.

The requirements of this new process for management are: (1) substantial training of supervisors, middle management, and top managers in handling grievances; (2) continuous feedback to managers on resolution of grievances, as well as pertinent policy and procedural changes; (3) a central office consulting and review capability in support of steps 2 and 3 grievance dispositions; and (4) a grievance accounting system for evaluation and tracking of the entire process.

Since negative responses to grievances can be appealed to higher levels, one can expect a high percentage to be appealed to subsequent steps. Step 4 is usually the state office of employee relations; step 5 is the arbitration or fact-finding stage. At step 5, most systems develop a large backlog of cases. Since the state and unions pay one-half of the costs of step 5, as cases come up for assignment the union typically will withdraw more than half of the cases and accept the step 4 decision.

In Wisconsin in 1975, 250 cases were appealed to step 5, but only 60 went to arbitration. This is the most troublesome stage of the process for two reasons. First, in many cases, some procedure or policy is virtually frozen pending disposition which may take six months to a year or more. Second, the professional mediator or fact-finder may know little about correctional administration problems, so there is always the risk of an adverse finding.

Only serious and substantial issues should be scheduled for step 5. In most collective bargaining states, step 5 appeal cases by the union include a great number of almost frivolous matters the unions are not really serious about. As an advocate of the employee, unions would rather not be in the position of advising a member to accept an adverse conclusion by management at any step before the highest appeal.

It must be remembered that in the grievance process, management has most of the advantages. It is the defendant and judge of its own actions. The union is the only party able to appeal to a higher level. In some cases, however, the union carries a case for management up the appeal ladder to an arbitrator's award.

Labor-Management Meetings

The principle objective of management in dealing with the continuing processes of contract administration is to institutionalize a new managerial style in dealing with employees. This is perhaps best illustrated through the use of labor-management meetings.

The managerial role is more positive in labor-management than in the grievance procedure. In meet-and-confer, managers will discuss actions under consideration with the union. The union is able to contribute information aiding in the analysis of the problem and can offer other possible solutions. If the discussion is genuinely open and the union's input is considered in the final decision, the union is more likely to support the final action.

Meet-and-confer usually occurs with some regularity between prison superintendents and local union leaders. Additional meetings would be held on request of the superintendent or the union to consider some immediate problem. In some institutions, the meet-and-confer process is fully satisfied by having the union local president attend all of the superintendent's staff meetings. This may be impossible, however, if there are several unions representing the institution's employees. In such cases, there is often enough good will among the several locals so that all can meet with the superintendent simultaneously. The superintendent typically will have an agenda prepared for regular meetings and will be accompanied by his top assistants for operations, treatment programs, and business. Also present will be his personnel or employee relations staff member and the training officer. Other staff may be present depending upon the items listed on the agenda.

Some managers who have been successful with an authoritative style cannot tolerate questioning of their decisions without discomfort. They will find it difficult adjusting to the more open, participative management style of operational assessment and administrative planning involving rank-and-file employees. Substantial training and supportive assistance from the department commissioner and staff may be required to reduce the tensions often produced by meet-and-confer and grievance procedures.

Departmental Labor-Management Meetings

Whether or not prescribed by the union contract, departmental meet-and-confer should be a regularly scheduled (perhaps bimonthly) meeting. State union officers and some staff members usually are present, as well as various local presidents. It is often desirable to have in attendance the staff member of the state office of employee relations who normally will handle most step 4 corrections grievances.

Ideally, the meeting will be structured so that there are two chairmen supported by their respective staffs. The agenda may be prepared by either side, but there should be enough informality so that matters important to either chairman can be put on the agenda at the meeting for at least a preliminary discussion.

While the meeting agenda tends to relate to specific problems, the principal hidden item is the development of rapport, mutual respect, and trust between the two groups. Major policy and operational problems of the department should be brought up, particularly if outside pressure is developing, if substantial fiscal augmentation is sought, or if new legislation is being considered. Through its many political lines of communication, the union can be a powerful ally to departmental management.

Multiple Unit Representation

Where various unions represent departmental employees, it may be necessary for the commissioner to meet separately with some of them. Where several unions are represented by the same national or statewide union, all matters can be dealt with at one meeting if the state union officers agree. Special meetings and attendance plans may be arranged to deal with a critical topic such as hospital services, prisoner rebellion, or drastic budget cuts.

IMPACT

In addition to extensive adjustments required in management style and procedure, the predominant impact of contract administration is the new workload generated for management staff. This can be relieved somewhat if additional staff are provided for employee relations assignments. Nonetheless, top administrators will be devoting considerably more time to employee matters.

Some departments have gone through the initial period of contract negotiations and the first year of contract administration without additional staff (other than a personnel office staff member assigned to the new functions) and later will have new positions allocated which bring experienced labor relations staff into the organization. This approach can have disastrous results. Specialized assistance is most critical at the beginning of the collective bargaining process in order to avoid as many problems as possible and to provide expert liaison with the state office of employee relations.

Related Issues

1.03 - Contract Evaluation

1.10 - Training in Employee Relations

1.12 - Organization for Employee Relations

1.13 - Management Rights

2.01 - Grievance Procedures, Steps 1-3

2.02 - Grievance Procedures, Steps 4 and 5

1.07 INCREASING PRODUCTIVITY WITH MANAGEMENT-UNION COOPERATION

Issue: Is it feasible to negotiate for increased productivity or efficiency in state correctional operations to offset the employee contract costs?

Corollary Issue: Is it feasible to continue expansion, enrichment, and diversification of correctional services--all of which involve additional funding--in states where collective bargaining is established?

PRINCIPLES FOR ADMINISTRATIVE ACTION

To many administrators, progressive development of state corrections seems impossible under union contracts which continue to absorb most of the new appropriations to the corrections agency. The MERIC project surveys of state corrections revealed no instances in which savings were accrued to offset new benefit costs. However, some interesting attempts have been made to solve this problem.

In Pennsylvania's latest contract, as a partial offset to the pay increases negotiated for correctional officers, a new class of correctional officer trainees was created two steps lower than the beginning correctional officer salary. In this way, new employees not yet hired will pay for part of the increase in the pay of present employees. Unfortunately, since the pay rate of the new entry class is less than competitive for the qualifications sought, this could result in a reduction in the overall caliber of future correctional officers.

The 1975-77 contract between Wisconsin and AFSCME contained an unusual provision:

> Within 30 days of the effective date of this contract, a joint labor management commission to identify and help effect savings in the costs of the general operations of State government shall be established.
>
> The commission will consist of three (3) members selected by the Wisconsin State Employees Union Council 24; three (3) members selected by the Governor; and one (1) public member mutually agreeable to both labor and management. The terms of their appointment shall be the duration of this contract.
>
> The commission shall operate according to the following criteria:
>
> 1. In order for the savings to be considered as a savings effected by the commission, the idea for the savings must:
>   a. Be made by an employee of the bargaining unit to the commission, or
>   b. Be identified directly by the commission.
> 2. Savings must be documented and achieved before they become available to the commission.
>   a. Savings may be achieved by:
>   (1) Legislative action
>   (2) Executive order
>   (3) Administrative procedural change--whichever is most appropriate
>   b. Savings will be documented by a three-member committee consisting of the state budget director, the legislative auditor, and one designee of the Union.
>   c. Savings can be audited by either labor or management at any time.
> 3. Only those funds which are legally available for redistribution by the mechanisms indicated in 2a will be available to the commission.

4. No monies will be distributed without a majority vote of the full commission.

5. Monies will be available for distribution according to the formula set out below.

6. No specific initiatives taken by management prior to this agreement or initiatives formulated and implemented by management independent of the commission will be available for savings to the commission.

If the BLS Consumer Price Index-National Series (1967 = 100) increases less than 8% for the base periods described below, employees shall receive 25% of the savings for wage increases built into the base wage rate. If the BLS CPI increases 8% or more, 50% of the savings will be set aside for wage increases. No more than a sum equal to a 3% wage increase may be built into the base salary during any six (6) month period. However, employees shall be entitled to all increases as a result of all designated savings.

1. Base period for additional wage increases effective July 4, 1976: June 1975 to June 1976.

2. Base period for additional wage increases effective January 1, 1976: December 1974 to December 1975.

3. Base period for additional wage increases effective June 30, 1977: June 1976 to June 1977.

If not enough money is saved in any period to finance an increase, it will be carried over to the next period and added to any additional savings in the succeeding period(s).

Full analysis of this provision cannot be undertaken until more experience with it has accumulated. The incentive to achieve savings is substantial; the returns are permanent increases to the base salaries. However, it is possible that the multi-year carry-over costs, which are added to retirement and other compensation for time not worked, will equal or exceed all economies made. Thus, it is doubtful that this will become a significant means for offsetting the extensive new costs of this AFSCME contract. Since the identified savings are calculated on the first year of savings and one-fourth to one-half of it is applied to employee pay increases in the subsequent year, it appears that Wisconsin will lose money. The pay increases will go on indefinitely. A new base is provided not only for cost-of-living increases, but also for calculation of indirect costs such as vacations, sick leave, retirement, and workmen's compensation.

Reportedly, a union has suggested that savings be achieved by eliminating a large number of management positions. This was not verified, but the report indicates the apprehension of management regarding the manner in which the unions will approach the offsetting of new costs. The approach is not a unique one. The Trenton (New Jersey) Police Department's contract with the Policemen's Benevolent Association for 1976 provided for the abolishment of as many officer positions as needed in order to finance the increase. Most-recent-hire was the basis for layoff, as would be expected.

One means of achieving the support of unions in the effort to increase productivity is to establish machinery for union-management cooperation. A relevant provision of an AFSCME contract with a county hospital is shown:

Joint Committee to Improve Morale, Attendance and Deliver Better Patient Care

> The purpose of this article is to establish joint efforts to achieve improved relations between the parties so as to avoid future grievance, improve employee morale, improve productivity, improve attendance and to deliver better patient care by establishing meetings and sessions between the parties by:
>
> (A) A better relations committee made up of six (6) employees at the City of Memphis Hospital, three (3) employees at Shelby County Hospital, and three (3) employees at Oakville Memorial Hospital and a like number of management representatives at each hospital of the Authority, to meet and discuss the above matters. A staff representative of the Union may be present if the employees so request. The Committee shall meet once each month for one hour during working hours. The meeting may be extended for an additional hour by mutual agreement.
>
> The committee shall meet without loss of pay. There shall be no discussion of grievances which have been filed, or discussion concerning the application, meaning or interpretation of this agreement.
>
> The agenda for the meeting shall be agreed upon one week in advance of the scheduled meeting between the chairpersons for each side of the Committee.
>
> Additionally, the names of persons who will be on the employee committee will be presented to management one week in advance. Nothing agreed upon by the Committee shall change, alter, or amend the Memorandum of Understanding. In the event a harmonious atmosphere cannot be maintained, either party may terminate the meeting at will, and the employees shall return to work.[1]

Public Unions and the Need for Improving Productivity in State and Local Government

The long-standing problems of achieving an effective and efficient government are greater than the unions' limited role could either cause or correct alone. Still, responsible union leaders recognize that their contributions and derived benefits are most satisfying in a public organization that is effective and efficient.

Figure 2 graphically illustrates the extraordinary growth of state and local government compared with the federal government whose cost has more than doubled in this period. State and local government purchases increased by over 700 percent, composing (as shown on the following page) 14 percent of the entire gross national product (GNP) of the United States.

The challenge presented by this situation is to avoid the difficult choice between increasing taxes and reducing services, although many governments currently are opting for one of these alternatives. The third option, as presented by the Committee for Economic Development, is "that more intelligent use be made of existing resources to achieve desired goals; that is, increase governmental productivity."[2]

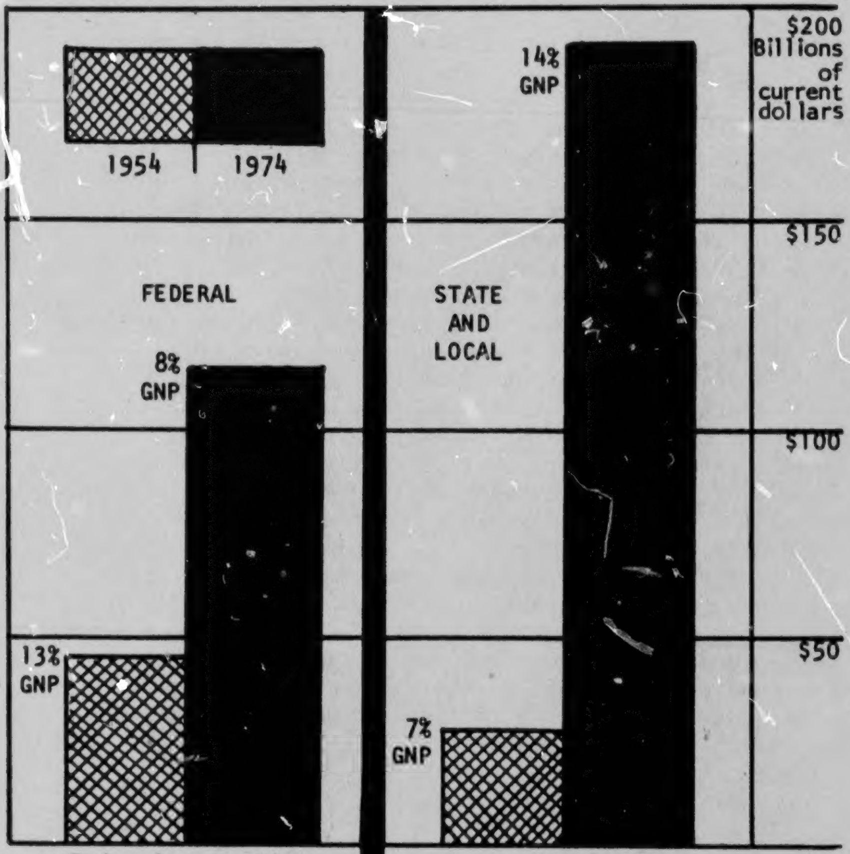
Although the importance of this report is greatly understated by selecting only a few pertinent statements for presentation here, the following excerpts are offered for their relevance to the topic of government productivity.

MEANING OF PRODUCTIVITY IN GOVERNMENT

> The concept of productivity implies a ratio of the quantity and/or quality of results (output) to the resources (input) invested to achieve them. Government productivity has two dimensions: effectiveness and efficiency.
>
> Effectiveness concerns the extent to which government programs achieve their objectives. This presumes that decisions about what and how much governments do are based on considered judgments of the relative importance and cost of meeting public needs. Perceptions of need, in turn, are presumably based on demands and expectations of voters and consumers as expressed through the political process. . . .

FIGURE 2

GOVERNMENT PURCHASES OF GOODS AND SERVICES IN THE UNITED STATES, 1954 AND 1974*



Federal government purchases of goods and services:

1954	$ 47 billion
1974	$116 billion

State and local government purchases of goods and services:**

1954	$ 27 billion
1974	$192 billion

*Excludes transfer payments to individuals (social security, welfare, and so forth), which increased from $15 billion, or 4 percent of GNP, in 1954 to $134 billion, or 9.6 percent of GNP, in 1974.

**Total includes purchases made with federal grants.

SOURCE: Economic Report of the President (Washington, D.C.: U.S. Government Printing Office, February 1975).

Efficiency concerns the organization of resources to carry out government programs and functions at minimal cost. Efficiency may be expressed in several ways, including output per manhour, capital-output ratios, and more broadly, least-cost combinations of resources.

Productivity improvement, therefore, is an increase in the ratio of outputs to inputs, that is, providing more effective or higher-quality services at the same cost (or the same services at lower cost).

The inputs to government are relatively easy to define. They are the goods and services purchased by government from individuals (mainly public employees) and from outside organizations (mainly private firms). They can be measured in conventional terms: manhours, machine time, or money costs per unit. . . .

The outputs or results of government activity are more difficult to define. Some government services, such as refuse collection, are similar to those provided in the private sector; but because they are financed primarily by taxes, their objectives or value cannot be readily determined by market criteria, as in business. Government activities that aim to achieve broad social goals, such as creating a sense of physical security, are more difficult to define. In such instances, it is important to consider the full impact and consequences of government actions rather than just outputs, which refer to the immediate results of program activity . . . for the purpose of defining and improving productivity, we view government outputs in the narrow economic sense: as those goods and services that governments produce for consumers.[3]

THREE STEPS TOWARD GREATER PRODUCTIVITY

Government productivity requires attention to each of the three steps in the process of transforming public desires and tax money into accomplishments: identifying goals and objectives, choosing among alternative approaches to achieve objectives, and implementing programs.

Identifying Goals and Objectives. Productivity must first be concerned with what government should or should not be doing to meet citizens' needs and desires. In theory, such determinations are made by collective choice through the elected representatives of the people. In practice, however, the political process rarely works so neatly. . . .

. . . Most citizens are poorly informed about what government does, have infrequent personal contact with government bureaucracy, and become concerned only when there are apparent breakdowns of crucial public services. Public perceptions of the quality of a government service may be quite at odds with what objective indicators reveal about that service.

In the absence of more objective criteria, elected officials are likely to establish or modify goals on the basis of demands from pressure groups, levels of complaints, their own political ambitions, and views expressed through the media, which both reflect and create public attitudes. Few public officials consider what their respective government ought to be doing, focusing instead on the more immediate problems associated with what they are doing. Where questions of purpose and performance are raised, functional fragmentation permits responsibility to be passed from agency to agency. Thus, the police blame the courts for failure to punish criminal offenders; prosecutors claim that the police fail to supply evidence needed for conviction; and all blame correctional institutions for not rehabilitating convicted felons.

Such behavior can be explained to some extent by the nebulous and conflicting nature of public goals. However, to excuse nonperformance by government agencies on the grounds that many of their goals and objectives are intangible is to evade the primary issue. The ultimate objective of most activities, including those in the private business sector, are intangible. With any activity, the essential priority is to devote continual attention to its major purpose, however difficult that may be to define. Intangible goals must be redefined in terms of more specific and tangible objectives that can be measured. Only then can resources be allocated toward their accomplishment, strategies and activities planned and carried out, responsibility for actions assigned to specific people, and performance ultimately evaluated so that someone can be held accountable for results. . . .

Choosing among Alternatives. In order to achieve basic goals and objectives, choices should be made among alternative approaches. Selection of approaches with the highest cost-effectiveness ratio presents the greatest opportunity for improving government productivity. It also poses the most difficult problem of public management. How should housing be provided to low-income families: through government-constructed housing, rent supplements, or general income-maintenance programs? Which approach will more effectively hold down crime rates: increasing the certainty of apprehension, conviction, and punishment of offenders or providing job opportunities for unemployed teen-agers, who commit a disproportionate amount of crime?

In practice, few jurisdictions systematically identify policy alternatives, let alone analyze their relative costs and benefits. Rather, agencies tend to persist in using time-honored if demonstrably ineffective approaches and techniques simply because they do not know of better means or have no incentive to seek alternatives. Government agencies thus miss opportunities both for improved achievement and for cost savings that can be realized by eliminating marginally useful activities. The unexamined life, said Socrates, is not worth living; in government, the unexamined program is frequently not worth maintaining.

Implementation: The Business of Getting Things Done. The time-tested principles of organization, specialization, supervision, communication, and established procedures are still largely valid; the missing ingredient in many government agencies has been the will and ability of managers to apply them.

Many government operations, however, have become so large and complex that they require more sophisticated techniques of analysis, technological application, and management skill than those traditionally used by most governments. The problems of implementing government policy are currently little understood, involving as they do nebulous and often conflicting objectives, interaction among numerous government and nongovernment groups, and the need to balance political with technical considerations. Policy guidance from top officials is often so broad and ambiguous (in some cases necessarily so) that it places great responsibility for policy making in the hands of lower-level administrators. In turn, policy implementation in key functions rests heavily with the individual employee (the policeman, teacher, social worker, and others) who actually delivers the service or otherwise represents government to the public. Management in many government operations is less a matter of issuing directives from central command posts and more a process of communication and persuasion among top management, middle-level supervisors, employees, and citizen-consumers.[4]

PROGRESS TOWARD IMPROVEMENT

Only very crude estimates of overall state and local government productivity are possible with the data now available. Although some jurisdictions have made significant progress, existing data suggest that productivity may have declined in other areas. There are great disparities in performance levels from city to city; for example, one city collects three times as much refuse per manhour as another of similar size and topography. The absence of comparable performance data itself suggests lack of interest in productivity on the part of local officials. The federal government has undertaken a major effort to measure its own output and reports that the 65 percent of the federal civilian work force whose performance can be measured quantitatively improved their productivity by an average of 1.5 percent annually from 1967 to 1974.[5] This effort underscores the potential both for measuring and for improving government productivity.

Some governments are paying greater attention to analyzing program benefits and costs and ways to improve and reduce the costs of operations in refuse collection, health care, police services, and other functions. A few states have created machinery to handle metropolitan-wide problems in a number of areas. Several states and localities have developed outstanding records for effective management. Such achievements can provide the momentum for further progress. . . .[6]

PRINCIPAL AREAS OF OPPORTUNITY

Despite the diversity of America's 39,000 states, counties, townships, and municipalities, certain deficiencies and opportunities for improvement can be identified that are common to a large proportion of their governments.

Strengthened Management. The greatest opportunity for improved government productivity lies in strengthened management. Deficiencies in management derive largely from the absence of political pressure for productivity on top elected officials (governors, mayors, county executives, legislatures, and councils) and from the failure to link the performance of agencies directly to the salaries and promotions of responsible managers.

Improvements can be made in each of the three principal elements of government management: planning and budgeting, decision making, and operations. More effective recruitment and development of government managers are also required.

Work Force. The potential of employees, which is critical to productivity because government operations are labor-intensive, has not been fully developed.

This statement does not attempt a detailed examination of worker motivation and labor relations because these will be subjects of a future policy statement. However, three issues of prime concern should be mentioned here.

First, collective bargaining is changing the relationship between public managers and employees, raising important questions about the political strength of labor in determining settlements and changing the climate of management through the blurring of distinctions between negotiable labor concerns and basic management prerogatives. The practices and traditions that are established now will determine for years to come whether collective bargaining will enhance or impede government productivity.

Second, many civil service systems show signs of rigidities and other tendencies that impede productivity.

Third, changes in the education, skills, and attitudes of workers require managers to rethink traditional modes of operation and personnel management, especially in those functions that require a high degree of employee discretion in carrying out policy.

Technology and Capital Investment. Much of the gain in productivity in industry has resulted from technological advances and capital investment. Numerous examples of innovation in cities, counties, and states (in better refuse collection devices, new fire fighting apparatus, and improved police communication equipment) have demonstrated that ingenuity, experimentation, and perseverance can produce results in the public sector as well. We believe that greater use of technology will depend largely upon the demand created for it by state and local governments through better identification and communication of need to potential suppliers, a more aggressive search for existing technologies, and the appropriation of funds explicitly for technological screening, experimentation, and implementation.

Improved Measurement. State and local governments should improve the measurement of their activities by employing existing but little-used techniques that provide basic management information and by developing and adopting newer techniques that focus on the evaluation of results. The indicators should focus on social conditions, program effectiveness, and program efficiency. When coupled with political and professional judgment and assessed against costs, a combination of indicators can provide a more complete understanding of the overall productivity of most government activities.[7]

The success of public management-employee relations, therefore, requires that a secure and enlightened union leadership work cooperatively with a progressive governmental management in pursuit of greater governmental productivity. While seeking improved employee benefits and working conditions, the unions should not overlook the opportunity to strengthen management's position, policies, resources, and skills. The destruction of an aspiring and competent manager, who is seen on one issue to have hindered union success, is unfortunate not only for the employing agency, but, in the long run, for the union itself.

While there are too often few rewards or reinforcements for responsible managerial performance, unions also should receive more than begrudging recognition for their direct and indirect contributions to good, responsive government.

With diminishing resources to support the needs of a growing public service, the unions will be expected to change their posture to one of advocacy for measurement of organizational productivity on a variety of criteria. Thus, security programs at prison X can be measured or compared to prison Y. At the same time, specific work unit measures of disciplinary reports, property theft and damage by prison areas, and overtime analysis can be incorporated into a comprehensive program of improvements in institutional operations. Too narrow or limited measurement programs in the past often have been used to discredit the unions.

There should be persistent examination of policy options, involving curtailment or abolishment of ineffective governmental programs, expansion of effective programs, and assessment of needs for development of new programs. In some agencies, however, effectiveness and efficiency are impossible to achieve due to excessively large or small size. In corrections, this is found in both very large prisons (over 2,000 prisoners) and in the very small (under 100 prisoners, e.g., some institutions for women). The problem is not so much one of absolute prison size as it is of increasing staff layering due to emphasis placed over the years on the closer coordination of work; its control for consistency and uniformity through increasingly specific rules and administrative manuals; review of decisions; records of activity and actions; and use of functional specialists as in timekeeping, inmate records, security searches, property control, arsenal, locks, uniforms, employee relations, and so on. Each can be justified at a point in time but, ultimately, the whole structure of an operation which must be responsive to an almost infinite variety of events and interactions will break down. It can be almost overwhelming to the line correctional officer and extremely frustrating to the prisoners in attempting to deal with the bureaucracy. Since union contract administration can add to this problem, its negative effect on organizational productivity could be much greater in relatively large institutions. If the institution has been fortunate in obtaining the positions requested, one may find nearly as many custodial staff positions and supervisors as line personnel on the day shift. At that point, the organization should be in serious trouble in terms of productivity.

Small prisons have the problem of comparatively high overhead costs in relation to the number of prisoners supervised. The point of diminishing returns on investment for staff specialists is so low that many line positions must have dual functions (e.g., correctional officer-storekeeper, sergeant-records officer, and lieutenant-parole officer). Such organizations consist of more "generalists" where management-staff consensus is continually at work in coping with daily problems. Such organizations will be found, under collective bargaining contracts, to have informally modified many of the provisions for the convenience of all (e.g., seniority job and shift assignment, and steps 1 and 2 of the grievance procedure combined).

None of these considerations and alternatives is precluded by the assertion that the principal concentration of managerial policy and action in corrections should be on the level of productivity of the organization as a whole and its components. The need for this existed prior to the emergence of public employee unions, but it is now more critical because of their existence. The demands of employee unions are considerably more difficult to accommodate because collective bargaining begins at a time in history when all resources, including public funds, are diminishing. Since unions share the problem, they should be a part of the solution.

Productivity Bargaining

"Once again national interest in improved productivity is on the rise as a solution to our high rate of inflation, our declining competitive position, and our inability to resist import penetration."[8]

It has been stated that the concept of productivity bargaining has seized the imagination but not much else. Private sector experiences during wage control periods are not encouraging, but few industries are as labor-intensive as is government.

Sam Zagoria is as optimistic as any professional in this field that the productivity bargaining concept can be highly effective for government:

> . . . At the tail-end of 1975, as the country stood confounded by "stagflation," cities found themselves wrestling with two formidable opponents—declining revenues and soaring costs. At a time when sales tax revenues slumped, real estate taxes were no longer booming and collections were slower coming in and income taxes showed the pinch of a declining economy, municipalities found that everything had gone up in price—fuel bills for buildings and vehicles quadrupled, cost of capital borrowing almost doubled and costly welfare rolls grew, demand for health services expanded and were increasingly expensive to provide. In short, a dismal fiscal situation and a grim 1976 ahead.
>
> In these circumstances, the grow and grow syndrome is bound to taper off; indeed some communities have already decreed job freezes and shrinking work forces by attrition and a few hard-hit central cities have had to resort to actual layoffs. This has left them with a new interest in productivity—how to provide the present level of services with the same or smaller work force.
>
> The comfortable living of the early Seventies when some poor performers, no-shows and sometime-shows could be absorbed in the tremendous expansion without seriously impairing essential services is ending.
>
> The concept of comparability between public and private sectors is taking on two new dimensions. Public administrators have pretty well convinced taxpayers that

total compensation—wages and fringes—has to keep up with the private sector. But now there are also (1) growing murmurs from the public that individual performance has to keep up with the private sector and (2) in the layoffs and reduced work forces there are reminders that, as in industry and commerce, government jobs are not necessarily forever.

As so often happens, the first thrusts came in New York City. The insistence that unit costs in the public sector should compare favorably to those in the private sector led the government of New York City to begin citing the private garages' flat rate work book to its sanitation truck repairmen in arguing that their own efforts should be comparable. It took time to negotiate performance standards, but they are working. Additionally, taxpayer groups highlighted the tonnage price charged by private cartage men for removing residents' household garbage and urged either attaining comparability or considering the wisdom of subcontracting. (Some communities do employ private firms on such tasks as collecting garbage already.)

Productivity—a commonplace word in the lexicon of business and industry—is beginning to be heard increasingly in government circles and with a new note or urgency. Much has been started by managerial initiatives although even managers need to be jogged periodically that they have a duty to manage, not merely process work. . . .

. . . workers are interested in the work they do and bring a first hand expertise to revamping the work process, that they have a major stake in the changes. It implies a management view of workers as people, who given the chance would rather do a good and useful day's work than to dog the hours and goof off as much as possible. . . . there is a lot of unused potential in individual workers, and if they are part of an improvement plan the plan will be welcomed rather than resisted.

This may seem like a risky experiment, but consider the constraints and the possibilities. Managers can appropriately require that any proposed changes bring about at least as much and as good quality services as presently. This means the only way for productivity to go is up, and if it doesn't there's always the old way easily remembered and reinstated.

The possibilities are immense. This kind of effort can build a team spirit and lessen a we-they relationship; it is reorganization planned by the people on the job and not by outsiders or topsiders so that there is a likelihood of less complaints and more cooperation; it can stimulate an attitude that doing the job better is a matter of personal pride and achievement.[9]

There are, of course, the normal constraints on the application of productivity bargaining, well stated by Rudolph A. Oswald. First, it is claimed that the collective bargaining contract itself improves productivity:

> Productivity is also frequently related to the number of hours worked per day, week or year. The general reduction in hours of work has been accompanied by a substantial growth in output per man-hour. Studies of worker fatigue conducted during World War II showed that long working hours not only led to declining marginal productivity, but to overall reduced efficiency as well. Thus the contract limitations on hours of work and overtime may often be a factor in improving overall productivity gains. Similarly, the vacation period allows workers the time to renew themselves and approach the job again refreshed.
>
> Contract clauses dealing with safety and health or other working conditions also affect morale and productivity. An example would be a clause requiring management to provide rain gear to sanitation workers: "A worker who is provided with rain gear on a wet day will collect garbage more efficiently."[10] Such protection would most likely also cut down on illness and the resulting absenteeism. Other protective equipment would tend to reduce work injuries and the attendant loss of time.
>
> All these clauses are part of the usual collective bargaining agreement. Their very existence encourages higher morale and generally higher output per man-hour.[11]

It seems that the concept of productivity bargaining rests on the foundation of near-absolute assurance that existing jobs will be protected, as Oswald points out:

> What, then, is productivity bargaining? Basically, it is just another element in bargaining dealing with methods for improving productivity. Frequently, the approach may entail some type of problem-solving or gain-sharing strategem. In reviewing present work practice and procedures, the bargaining committee may recommend more efficient ways to get the tasks done. This may involve changes in traditional occupations, work jurisdictions, job rights or established customs.

These are very sensitive areas, and need to be treated cautiously. Work patterns develop a certain tradition, and become institutionalized as "past practice." Further, the changes proposed may pose a threat of unemployment or reduced income to the incumbent job holder.

These threats must be allayed from the very beginning by guarantees against any layoffs or pay cuts resulting from the proposed changes. These guarantees are elementary threshhold conditions for effective productivity bargaining. Fear of losing jobs can be the dominant force that motivates employees to resist improvement efforts. Even "a single layoff can have devastating personal consequences for the individual involved and can undermine the morale of the remaining workers."[12] If job changes require the abolition of certain jobs, such abolition should not be made in one sweeping gesture, but rather gradually, allowing normal forces of attrition to curtail the number of positions, as well as establishing formal retraining programs and encouraging transfers to areas of greater need. Similarly, guarantees against income loss can be achieved by so-called "red-circling"—a program that would assure incumbent workers that they would not suffer any cut in earnings, although new hirees could be brought into the job at lower wage levels. It is important to remember that the goal of the program is to improve productivity, not to cut salaries or reduce the work force.[13]

Pertinent Standards and Goals

Standard 15.5, Evaluating the Performance of the Correctional System, is quoted below:

> Each correctional agency immediately should begin to make performance measurements on two evaluative levels—overall performance or system reviews as measured by recidivism, and program reviews that emphasize measurement of more immediate program goal achievement. Agencies allocating funds for correctional programs should require such measurements. Measurements and review should reflect these considerations:

1. For system reviews, measurement of recidivism should be the primary evaluative criterion. The following definition of recidivism should be adopted nationally by all correctional agencies to facilitate comparisons among jurisdictions and compilation of national figures:

Recidivism is measured by (1) criminal acts that resulted in conviction by a court, when committed by individuals who are under correctional supervision or who have been released from correctional supervision within the previous three years, and by (2) technical violations of probation or parole in which a sentencing or paroling authority took action that resulted in an adverse change in the offender's legal status.

Technical violations should be maintained separately from data on reconvictions. Also, recidivism should be reported in a manner to discern patterns of change. At a minimum, statistical tables should be prepared every 6 months during the 3-year followup period, showing the number of recidivists. Discriminations by age, offense, length of sentence, and disposition should be provided.

2. Program review is a more specific type of evaluation that should entail these five criteria of measurement:

a. Measurement of effort, in terms of cost, time, and types of personnel employed in the project in question.

b. Measurement of performance, in terms of whether immediate goals of the program have been achieved.

c. Determination of adequacy of performance, in terms of the program's value for offenders exposed to it as shown by individual followup.

d. Determination of efficiency, assessing effort and performance for various programs to see which are most effective with comparable groups and at what cost.

e. Study of process, to determine the relative contributions of process to goal achievement, such as attributes of the program related to success or failure, recipients of the program who are more or less benefited, conditions affecting program delivery, and effects produced by the program. Program reviews should provide for classification of offenders by relevant types (age, offense category, base expectancy rating, psychological state or type, etc.). Evaluative measurement should be applied to discrete and defined cohorts. Where recidivism data are to be used, classifications should be related to reconvictions and technical violations of probation or parole as required in systems reviews.

3. Assertions of system or program success should not be based on unprocessed percentages of offenders not reported in recidivism figures. That is, for individuals to be claimed as successes, their success must be clearly related in some demonstrable way to the program to which they were exposed.[14]

IMPACT

Employment in the public sector has grown rapidly over the past two decades. Table 6 indicates that while the population of the United States increased 28 percent from 1954 to 1974, employment in federal, state, and local governments increased 152 percent, as compared to a private sector growth of about 60 percent.

TABLE 6

GOVERNMENT AND PRIVATE EMPLOYMENT IN THE UNITED STATES 1954 AND 1974* (millions)

	1954	1974	PERCENT INCREASE
Federal government	2.2	2.7	22.7
State and local government	4.6	11.6	152.2
Private sector	42.3	64.0	51.3
Total nonagricultural employment	49.0	78.3	59.8

*Refers to wage and salary workers in nonagricultural establishments.

SOURCE: U.S. Statistical Abstract (Washington, D.C.: U.S. Government Printing Office, 1975).

Over the past 25 years, public employee salaries in the federal government and in the northeast, central, and western states have been established on the basis of prevailing pay for comparable classes in other public employment and private sectors. This has tended to produce pay increases substantially greater than the increases in cost of living as measured by the Bureau of Labor Statistics. While the 1973-75 consumer price index reflected major increases which prevailing pay setting of public salaries has failed to match, this was due partly to the recession and unusual pressures on public agencies to hold the line on budgets and taxes.

Under these pressures negotiated contracts provided for little or no salary increase, but substantial increases in other benefits: overtime provisions, more training time, more free insurance, retirement plan improvements, etc. In real costs, some of these benefits may be more costly than salary increases which might otherwise have been made.

In 1975-76, negotiated pay increases have not been excessive in terms of the prevailing pay concept--no more, possibly, than would have been provided without the unions. (The wage increase agreements widely viewed as excessive have occurred in city police and fire fighter contracts in New York City, Washington, D.C., and San Francisco.)

In the final analysis, union leaders must negotiate for what their members want. Employees cannot be expected to reflect management's interests, loyalties, and responsibilities.

Accordingly, management's concern for productivity offsets to new contract costs cannot be shifted to union leaders. On the other hand, union leaders may have to modify some of their attitudes brought over from private industry--for example, their opposition to increased work productivity (expanded duties or "speedups") or to reorganization or new procedures which eliminate jobs.

As recently reported in California, the political tides are running heavily against legislation giving public employees the rights to collective bargaining and strikes. State officials told an AFL-CIO conference:

> "The public must be convinced that collective bargaining won't lead to further increases in property taxes," Lieutenant Governor Mervyn Dymally bluntly told 250 labor leaders. Dymally's other criticism was of public statements by union leaders against attempts to eliminate outmoded governmental agencies. . . . "You have to end statements that sound like taxpayers only exist for the benefit of public employees."[15]

References

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2. Research and Policy Committee, Improving Productivity in State and Local Government (New York: Committee for Economic Development, March 1976), p. 11.

3. *Ibid.*, pp. 14-15.

4. *Ibid.*, pp. 16-18.

5. Joint Financial Management Improvement Program, Annual Report to the President and the Congress: Productivity Programs in the Federal Government FY 1974, Vol. I, Current Efforts and Future Prospects (Washington, D.C., June 1975), quoted in Research and Policy Committee, p. 19.

6. Research and Policy Committee, pp. 18-19.

7. Ibid., pp. 19-21.

8. Wayne L. Horvitz and Peter Tchirkow, "Productivity, Collective Bargaining and Wage Control," in Industrial Relations Research Association, Collective Bargaining and Productivity (Madison, Wis.: IRRA, 1975), p. 141.

9. Sam Zagoria, "Bargaining and Productivity in the Public Sector - A Management View," in Industrial Relations Research Association, pp. 63-77.

10. George Brooks, Negotiating for Productivity in Sanitation, Labor-Management Relations Service of the U.S. Conference of Mayors (Washington, D.C., 1973), p. 10, quoted in Industrial Relations Research Association, p. 88.

11. Rudolph A. Oswald, "Bargaining and Productivity in the Public Sector: A Union View," in Industrial Relations Research Association, p. 88.

12. National Commission on Productivity and Work Quality, So Mr. Mayor, You Want to Improve Productivity (Washington, D.C.: Government Printing Office, 1974), p. 27, quoted in Industrial Relations Research Association, p. 89.

13. Oswald in Industrial Relations Research Association, pp. 88-89.

14. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), pp. 528-529.

15. San Francisco Chronicle, 26 August 1976.

Also see Arvid Anderson and Hugh D. Jascourt, eds., Trends in Public Sector Labor Relations: An Information and Reference Guide for the Future, Vol. 1 (Chicago: International Personnel Management Association and the Public Employment Relations Research Institute, 1975). This publication contains excellent articles written by top practitioners in the public labor relations field. Significant articles include: (1) Lee C. Shaw and R. Theodore Clark, Jr., "The Practical Differences Between Public and Private Sector Collective Bargaining"; (2) Robert G. Howlett, "Contract Negotiation Arbitration in the Public Sector"; and (3) J. Joseph Loewenberg, "The Effect of Compulsory Arbitration on Collective Negotiations."

Related Issues

1.02 - Collective Bargaining Negotiations

1.13 - Management Rights

1.15 - Other Important Management-Employee Relations Issues

1.08 CONTRACT RENEGOTIATION

Issue: How does union contract renegotiation differ from initial contract negotiation?

PRINCIPLES FOR ADMINISTRATIVE ACTION

(1) Correctional managers must be better prepared with the facts concerning the existing contract, problems, costs, and other impact considerations.

(2) Management should have adopted improvements in the conduct of negotiations and in the mechanisms for analysis of union proposals and feedbacks to the state negotiator(s).

(3) Management should act affirmatively on certain issues based on experience with the current contract. For example, proposals to modify seniority requirements in assignment, promotion, and overtime should be ready to put on the table if they are well founded.

(4) Unions must come out of the bargaining with some gains, particularly if salary increases are to be minimal. Considerable pressure for gains in other economic and non-economic benefits is normal.

(5) The bargaining issues will always reflect the major economic and security concerns of employees. In times of perceived threat to job security, negotiations will center on either

job protection guarantees of assurances that positions to be created in other correctional services, such as group homes and halfway houses, will be available for and under the existing union.

(6) To the extent possible, correctional management should attempt to ensure that approval of all new provisions which involve significant additional expenditures will be conditioned on the availability of funds earmarked for these purposes in the legislative appropriation bill.

(7) The correctional administrator can expect to reap the harvest of good or ill will generated during the previous year's experience with grievance and meet-and-confer procedures.

IMPACT

The negotiation process is extremely time-consuming--often drawn out for months--and tensions mount as the various proposals are put forward and studied. While it is only one of many important functions of the correctional administrator, it is the moment of self-justification for the union's chief executive and negotiator. It is also a trying period for the state negotiator who may have to go through the difficult, ritualistic process numerous times with different unions.

The negotiation/renegotiation process usually involves several levels of bargaining, with some important discussions and concessions between the top labor leader and the governor or director of finance, and others between a union leader and the chairman of an important legislative committee. Although the media and other observers may be present at all formal negotiating sessions, some points of agreement will emerge without discussion and some issues will be unexpectedly resolved. Most of the political aspects of the collective bargaining process will be evident during contract negotiation and renegotiation.

Related Issues

1.02 - Collective Bargaining Negotiations

1.05 - Funding Contract Provisions

1.09 CIVIL SERVICE INTERRELATIONSHIPS

Issue: How does the civil service system relate to collective bargaining? In what way does this affect the correctional administrator?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Some union leaders have stated that collective bargaining ultimately will mean the end of civil service. This is because of the general substitution of service and seniority formulas for civil service tests in promotions within a general class series and the recognition that the union contract provides as good if not better protection of job security than does civil service. The latter is argued on the basis that union contracts not only protect the individual from discharge and other adverse actions without strong proof of incompetence or misdeeds, but also protect the jobs themselves--from abolishment, transfer, and reclassification--which the civil service does not do.

On the other hand, state civil service executives point out that while there will be a number of changes in civil service as collective bargaining becomes established, most aspects of civil service will continue to exist very much as they do now. In particular, they doubt that legislatures or governors are interested in reducing central control over the quality of personnel recruitment, testing, and certification at all entrance levels, as well as at other steps in the ladders of promotion.

It is generally agreed that there is too much overlap between the appellate review powers of both the civil service commission and the grievance procedure which on impasse can go to fact-finding and arbitration through the state office of employee relations. The Occupational Safety and Health Administration (OSHA) also may be involved in independent examination of prison employee working conditions, safety, and health. In some states, there is also an appeal route to the equal opportunity commission where racial or sexual discrimination is alleged. In nearly all cases, there is an ultimate appeal route to the courts.

While all overlaps need not be eliminated, certain personnel actions may be best removed from the grievance procedure and placed under the jurisdiction of the civil service commission or similar agency. These would be: (1) all aspects of the position classification plan, (2) determination of position allocations to classes, (3) determination of minimum qualifications of classes, (4) scope and administration of recruitment and examination, and (5) the certification of eligible lists and their abolishment. Where it is established this way, the unions represent their members individually and collectively before the civil service agency. Such appeals are usually faster and involve no additional costs to unions or management, as do arbitration and fact-finding.

The tension between collective bargaining and civil service merit systems has important implications for public sector employment, not only in the area of position classification systems, but also in job assignments and promotions. The movement from a state service in which promotions are based entirely on merit and competitive examinations to one in which promotions are based largely on a seniority criterion already is occurring in many civil service systems, spurred on by collective bargaining contracts.

The best example of this problem is provided by the state of California--which has not yet instituted collective bargaining for its employees. When it does, and if it also authorizes wage negotiations, the act will run head-on into another state act which as a matter of policy provides for determination of state employees' salaries on the basis of levels generally prevailing in the community and requires that these salaries reflect sound and fair internal relationships. To this end, the State Personnel Board (the civil service commission) is required to conduct periodic pay studies and to determine the amount of increase needed for each class other than statutory positions.

After a public hearing, the Personnel Board recommends to the governor that the amount of the increase found to be needed be budgeted in order to keep salaries on a comparative and competitive basis. The governor can request appropriation of the amount, or he can ask for more, less, or none. However, only the State Personnel Board has the power to make internal changes in the salary plan--provided that funds are available to finance the change. But by appropriation legislation, the legislature can provide for special increases to some employee groups or provide a flat amount for across-the-board increases.

This plan has been very popular with state employees and widely praised nationally. It has helped California to maintain a general salary leadership among the states. If collective bargaining is enacted for state employees, and the pay system is not altered, the role of the union in wage and salary negotiations probably will be restricted to hearing presentations to the State Personnel Board on the interpretation of prevailing rate data, the comparability of jobs, and the consideration of noncompensation factors such as fringe benefits. The difficulty with such pay-setting practices is that the rates lag behind the private sector and those public jurisdictions which have introduced collective bargaining or adopted other pay-setting techniques. In a healthy economy, the state lags behind the private sector in raising salaries, but in a flagging economy the state also lags behind the private sector in pay reductions and layoffs.

The State Salary Plan

Wage negotiation through collective bargaining seems to have caused few problems for the states' general salary plans. There are, however, sound reasons to expect more problems in the future.

To permit unfettered contract salary negotiation would require substantial modification of the California legislation described above. A more likely approach would be to make pay negotiations subject to review and modification by the state civil service commission after a public hearing, and to provide the right to further appeal. In most classes of interest to the unions, e.g., correctional officers, clerk-typists, tradesmen, and technicians, prevailing wage data provide a considerable range for interpretation and negotiation.

Considering the importance of maintaining reasonable pay differentials among managerial, supervisory, and worker classes, negotiated increases at the bottom will tend to produce proportionate increases in higher class levels. This will end whenever compaction begins to develop near the top where statutory ceilings establish a limit for top-level civil service positions. It is, of course, quite possible that union leaders will be among those lobbying for statutory salary increases on the basis that failure to provide these increases restricts workers' rights to a fair salary. In some cases, union appeals have caused subordinates to be paid more than their superiors whose salaries are set by statute.

Position Classification Plan

Personnel management orthodoxy holds that a position classification plan is the foundation of the entire personnel system. As widespread in private industry as it is in government, the position classification plan groups together positions on the basis of similar duties and responsibilities so that similar qualifications may be required of all who are considered for employment in the class and similar compensation may be paid to each.

The plan also relates classes to others in a series (e.g., junior accountant, intermediate accountant, and senior accountant) and specific lower classes to general higher classes. For example, an assistant chief, accounting division, may have the following classes eligible for promotion to the position: supervising accountant, supervising budget analyst, chief data processing technician, and senior cost accountant.

These relationships provide a rational, albeit subjective, basis for construction of a salary plan which provides higher salaries for classes deemed to have greater responsibility and authority. Some of the common classification series in a prison personnel system and their relative salaries are shown in Table 7.

The salary ranges indicated in this table refer to a series of several (usually five or more) monthly salary steps. Each step is usually about 5 percent higher than the one below it. Since the salary ranges overlap, it is possible for a sergeant with considerable seniority to be at a salary rate identical to that of a newly appointed lieutenant who had advanced only to the second step of the sergeant's salary range before promotion to lieutenant.

Under this system, the personnel analyst or administrator will wish to achieve fair and sound salary relationships which, once they are achieved, are resistant to change--except in those cases based on evidence of changing prevailing pay elsewhere or changes in job duties and responsibilities. At the same time, employees in each group can look across such a chart and feel that they deserve an increase in relation to another class.

TABLE 7

TYPICAL SALARY RELATIONSHIPS OF VARIOUS PRISON CLASSES

(All titles on the same level are paid at the same salary range.)

SALARY RANGE	CLASSES					
21			SUPERINTENDENT	MEDICAL OFFICER*		
20						
19						
18	ASST. SUPT., ADMINISTRATION		ASST. SUPT., CUSTODY	ASST. SUPT., TREATMENT		
17					CHIEF COUNSELOR	
16			CORRECTIONAL CAPTAIN	SUPVR. OF EDUCATION		
15	ACCOUNTING & BUDGET SUPVR.	CHIEF OF MAINTENANCE			SR. COUNSELOR	
14			CORRECTIONAL LIEUTENANT			
13	PROCUREMENT & SERVICES OFF.	BLDG. TRADES FOREMAN		ACADEMIC TEACHER		VOCATIONAL INSTRUCTOR
12		FIRE CHIEF	CORRECTIONAL SERGEANT	CHIEF RECORDS OFFICER		
11		LAUNDRY SUPERVISOR			CORRECTIONAL COUNSELOR	
10			SR. CORRECTIONAL OFFICER			
9		PLANT ENGINEER		SR. RECORDS OFFICER		
8	SR. PERSONNEL CLERK	TRUCK DRIVER	CORRECTIONAL OFFICER			
7			CORRECTIONAL OFF. TRAINEE	RECORDS OFFICER		
6						
5	PERSONNEL CLERK					

*While the medical officer is organizationally subordinate to the prison superintendent, his salary level is equivalent. This is an example of competitive salaries serving as a more realistic basis than hierarchical relationships if the position is to be filled. Others in this group, such as dentists and psychiatrists, might be paid even more than the superintendent.

Where collective bargaining units are formed by the top-bottom columns, in relation to the chart, seven different bargaining units are shown: correctional officers, accounting, clerical, social services (counselors), blue-collar trades, education-professional, and medical-professional. These would be called horizontal units because they would include like classes in other departments. Accordingly, the union representing correctional officers and senior correctional officers may be successful in negotiating a one-step (5 percent) pay increase for its members. This probably will force a corresponding increase in pay of lieutenant, captain, and assistant superintendent classes if pay relationships among grades are to be maintained.

If all are increased, the central personnel agency ordinarily will not want to increase the classes related to the custody series. The corrections agency may argue that the fire chief and the chief records officer should be granted increases in order to maintain parity with the correctional sergeant class, since a good source of recruitment or backup for these positions has been from sergeant positions. This source will dry up if sergeants are asked to transfer to a lower class. In another vein, the correctional counselors' union may revise its plan for a pay increase request and get on the bandwagon of "historical relationships" when they go to bargaining.

While every union would like to obtain an increase for its members higher than those obtained by other unions, management will tend to seek across-the-board pay increases in order to avoid a perpetual struggle with each employee group and union.

Wage Versus Non-Wage Benefits

While the pay plan provides the principal economic benefit for employees, it is obvious that other benefits such as sick leave, retirement, and health insurance are significant aspects of compensation. There are some benefits which prison-based employment can provide and these tend to increase under collective bargaining. These may include the following:

- Uniform allowances;
- Shift differential pay;
- Some meals free or at cost (approximately ½ price);
- Laundry service (free or at reduced rates);
- Low-cost housing (bachelor office quarters and houses for families);
- Nominal charges for shoeshines, haircuts, television repair, upholstering furniture, car repair, dry cleaning, etc., through vocational shops and assigned prisoner workers;
- In-service training on an overtime pay basis;
- Use of prison land, buildings, and utilities by employee associations, which facilitates an "employee cooperative" providing wholesale prices for gasoline and car services, auto parts and accessories, outside snack bar for staff and families, and catalog purchasing;
- Employee association profits from the operation of institution-located vending machines used by staff, inmate visitors, and inmates during visiting periods.

Hazardous Duty Pay Increase Requests

In the past few years, there have been increasing requests by correctional officer groups and unions for additional pay for hazardous work. As yet, there is no statistical evidence that the work of correctional officers has become more dangerous. For that matter, except for a few highly publicized events, it cannot be ranked as very hazardous in the first place. Whenever state occupational injuries are reported (for workmen's compensation) and tabulated by number of injuries per 100,000 man-hours worked (or other rate basis), correctional officers rank below forestry, parks, transportation, and highway maintenance workers; they are far behind police and fire department employees. However, the fear of injury among staff who deal directly with prisoners is undeniable.

It was not so much fear that motivated correctional officers in the maximum-security cell block of the Michigan City Penitentiary (Indiana's most secure prison) to walk out and picket. The danger of the assignment was cited as the basis for their demand for more pay than correctional officers in other assignments. However, while the state's pay system was not far out of line with pay levels in the central and southern areas of the state where most of the institutions were located, the real issue in this case was the need for higher pay for Michigan City correctional officers. Michigan City is located in an industrial area where prevailing pay rates were substantially greater and living costs commensurate.

While this fact was appreciated, it was a relief to the governor's personnel office to agree that a special pay allowance was warranted because of the hazards of the maximum-security unit assignment. In this manner, it was possible to avoid the unpleasant issue of a special pay differential for a particular area of the state.

One year later, nearly all correctional officers in the state were receiving the special allowance because there seemed to be no place to draw the line. First, the other correctional officer posts in Michigan City were found to be deserving of parity with the maximum-security cell block employees; later, maintenance, clerical, and professional staff also were receiving the "hazardous duty allowance." The policy had moved to the other adult institutions and in late 1975 seemed likely to be added to the juvenile institutions as well as the training academy. By December 1975, it appeared that there was justification for a special pay increase (above the minimum-step hiring rate) for Michigan City employees. This solution gave nearly all correctional employees a one-step increase. This occurred without collective bargaining, but with nearly all employees in Michigan City represented by unions. Michigan City correctional officers still have a good case for an additional special pay increase.

Correctional officers typify the many employee classes in a prison. The duties and hazards are reflected in the class specification, pay comparisons, and usually by inclusion in the early, full retirement plan. In most states, the higher incidence of heart attacks has been recognized in statutory provisions as a presumption of service connection of cardiovascular disability. Counselors, culinary supervisors, and trade foremen also work with most of these hazards, and they are killed or injured by prisoners at approximately the same rate as correctional officers. These other classes usually have no presumption of service connection for heart disabilities, and they are seldom eligible for the early retirement plan.

Special pay increases for added hazards faced in correctional work are likely to be high on the agendas of correctional unions in the years ahead. Correctional administrators must ensure that their respective state employee relations directors are cognizant of the problems which can result from negotiating away small benefits which ultimately cause serious problems for correctional administration and lead to additional pressures from other employee groups affected by comparative salary inequities. Equitable administration of the compensation plan is the administrator's responsibility.

Collective Bargaining Effects on Position Classification Plans

As already indicated, the position classification plan is as essential as the budget to public administration. The quality of the position classification plan, which varies considerably from state to state, can be generally appraised by seeing how well it is maintained. A plan is well maintained if there is constant revision of classes, new classes added, obsolete ones abolished, and a continuous job audit program to locate and correct misclassifications.

It is a well-known fact that jobs change. Many change under the impact of an individual in a particular job. An energetic, imaginative employee may expand a job's scope to the point where a higher or new classification is warranted. For whatever reasons, some employees neither perform all of the required duties nor exercise the authority assigned to them. An employee who cannot handle his current assignment sometimes is reassigned to a job which is less complex, without reclassification of the job.

After a few years, roughly 10 percent of all positions in a department or prison may be misclassified--about half of which are "underclassified" and should be upgraded to the appropriate class, while the other half should be downgraded because they are "overclassified." Employees usually are gratified to be upgraded and naturally resent being downgraded. After employee appeals are heard and reconsiderations given, employees who have been overclassified for many years usually are given a no-pay-cut or "red-circle" rate. In other words, they are reclassified to the lower class grade but retain their current salary until it corresponds to a step in the salary range of the lower class.*

Employees whose positions merit upgrading, on the other hand, may become angry when the civil service commission concludes that many other employees are eligible for promotion to this higher class, or that fairness requires that an examination for the class be held with the incumbent eligible to compete. The employee may be appointed to this higher class on a provisional or temporary basis until the examination is concluded and the position filled permanently from the new list of eligibles.

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*Some recent contracts have extended the negotiated pay increase to the employees on "red-circle" rates.

Under union contracts, the employee has a spirited advocate regardless of the outcome of the classification audit. Through the union, the employee can also draw on professional staff expertise to challenge the personnel classification experts. The personnel agency or civil service commission will be stimulated and improved, provided that union advocacy does not become excessive to the point of exhausting the personnel staff (which, of course, may generate the additional personnel staff needed for this work). An alternative response of the central personnel agency is to reduce the frequency and scope of the job audit program. Over a period of time, this will produce high rates of overclassification, causing the state to be overpaying a substantial portion of the work force. With the unions involved, the personnel agency also may become discouraged by appeals and by the conflicts arising from the creation of new classes. As a result, there is a tendency for the classification plan and its minimum qualifications section to become rigid and inflexible.

Most state personnel administrators would agree that, given the considerable time and money required, their state position classification plans should be completely revamped. However, it is a protracted and expensive technical task which is administratively disruptive until concluded. Thus, there usually are few who support overhaul of the classification plan, especially since the benefits of revision are uncertain compared to the known faults of the existing plan.

The U.S. Intergovernmental Personnel Act, administered by the U.S. Civil Service Commission, has an annual appropriation primarily for the purpose of assisting state and local governments in the development of their personnel systems. In December 1975, Indiana completed a two-year, grant-supported project to replace the state's position classification plan. The new plan could be a model for all states. Based on the federal classification system, it has considerably more flexibility in terms of updating and operational application. A feature of this plan is that each classification includes a statement of general duties which applies to all positions in the class. In another section, significant related duties which make certain positions more difficult or responsible are outlined. With point values for added duties, one class may have a basic salary range and higher salary ranges for some positions with the additional duties involved. An example would be the position of correctional officer in the prison isolation section who is trained and licensed to administer emergency medications or treatment in suicide attempt cases, and who is required to write a special evaluation report to the parole board on all cases in the section involving self-mutilation and suicide. Any correctional officer who performed such duties would be entitled to one or two additional salary steps for as long as he was qualified for and performed such duties.

The classification plan can be the basis for as much conflict as the salary plan. Correctional administrators usually do not appreciate this fact as their personnel offices handle the technical work involved. On the other hand, union staff usually do understand the principles of position classification because it provides almost unlimited opportunities to serve employees' interests. It is the basis for appeals to the following types of action:

- Creating new lists of eligibles;
- Abolishing old lists of eligibles;
- Determining the scope of recruitment (open or promotional; service-wide or departmental);
- Modifying the scope of examination (written, performance, oral);
- Modifying the weighting of examination parts (i.e., 60 percent written and 40 percent oral versus 40 percent written or 40 percent qualifications appraisal--points for breadth and length of pertinent previous employment and education);
- Challenging the appropriateness of assigned tasks to the given job and the authority of the job (often an issue in disciplinary cases);
- Altering the comparison of evaluations of work difficulty from one class to another (for pay purposes).

Correctional administrators anticipating the institution of collective bargaining in their states should do all they can to have their classification plans updated and all jobs audited by the personnel agency, as well as to establish any new classes which have been in the planning stage for the past few years.

IMPACT

The effects of multiple administrative appeal routes include confusion, duplication of work, and excessive costs. While the problem usually is recognized by legislation drafters and administrative operatives, its resolution is deferred because the solution is complex and controversial. The political expedient has been to put aside the question, agreeing that it must be dealt with at some time in the future, and to let the collective bargaining process commence.

The ultimate impact may be more serious than estimated by most employee relations experts. Dealing constructively with the problem may be much more difficult after collective bargaining is clearly established. This issue involving civil service conflicts and constraints was discussed in California's Final Report of the Assembly Advisory Council on Public Employee Relations:

> Civil service and similar personnel systems which predate the emergence of public-sector bargaining present perhaps the most difficult problems in resolving scope-of-bargaining issues related to alternative systems. Despite the current assumption in the State's three basic public employee relations statutes that meet-and-confer approaches to public-sector bargaining are fully compatible with "strengthening merit, civil service (tenure) and other methods of administering employer-employee relations," no interested party, to our knowledge, has seriously maintained that bilateral determination through collective bargaining in the public sector can go forward from this point of development without making inroads against existing civil service and related personnel systems. Rather, the major question . . . is whether, and to what extent, legal frameworks designed to advance public-sector collective bargaining should accommodate the continuing

> jurisdiction of civil service and other related personnel systems over various aspects of employment relationships. . . .[1]

A precedent case in Los Angeles was analyzed and the conclusion was reached that a public employee relations commission had little usefulness in disputes between that commission and the civil service commission when the enabling legislation fails to confront the issues of accommodation between the two largely competing or alternative systems of labor relations.

The report then turns to the "merit principle" issue which is a fundamental tenet of civil service. It is a "vexing" issue to presume the merit principle as an integral part of a broader civil service system and still have comprehensive collective bargaining without conflict between them. One way to resolve the issue could be to clarify or redefine the merit principle:

> . . . The only types of personnel matters mentioned in the [merit principle] definitions are those involving the movement of persons into, within, and out of an organization. . . . Personnel movements constitute the heart of the merit principle which, in the strictest sense, may be defined as the belief that the criterion of relative competence should be the controlling factor in decisions involving personnel movements.[2]

The report also provided an interesting statement from the Western Assembly:

> There is a pervasive confusion over the meaning of the terms "merit principle" and "merit system." The former embodies the requirement that employees be recruited, selected and advanced under conditions of political neutrality, equal opportunity, and competition on the basis of merit. The latter, for which "civil service system" is commonly used as an interchangeable term, has come to encompass comprehensive programs of personnel management, unilaterally initiated and administered by the government employer.[3]

The Western Assembly concluded that a merit or civil service system, thus broadly defined, is basically incompatible with a collective bargaining system, and must in time be absorbed or replaced by the latter:

> . . .Moving into areas currently occupied by civil service systems will plunge the parties into some rather treacherous waters, unless the process is accomplished concurrently with the enactment of comprehensive labor relations legislation that eases the transition.[4]

The California Assembly Adivsory Council felt that, in providing a period for accommodations between civil service and comprehensive public employee relations legislation, it could be a help or a hindrance:

> . . .The problem with public employee relations laws that do not contain accommodation provisions, it should be emphasized, is not that they necessarily restrict the scope of bargaining, but that they almost inevitably result in legal conflicts between collective bargaining and local merit systems that only the courts can effectively resolve. . . .[5]

The California Assembly Advisory Council went on to explore transitional changes. Cogent arguments were presented in support of the position that the substitution of seniority for relative competence as the controlling factor in promotions, transfers, and layoffs was not essentially inconsistent with the merit principle. For example, most civil service qualification criteria for promotion already include and recognize length of service as a relevant factor. Three conclusions were made concerning what to do in the face of the dilemma of policy planning--to resolve the compatibility issues by comprehensive collective bargaining enabling legislation or not attempt to resolve these issues, enact the enabling legislation, and let the solutions to the problems evolve over time:

> . . . At the same time, we think it would be a mistake to allow concerns about protection of the merit principle to become a vehicle for unreasonably restricting the scope of bargaining or for frustrating the evolution of constructive bilateral relationships in the public sector. . . .
>
> . . . under the best of circumstances, problems involving the degree of recognition to be given alternative or competing systems in framing comprehensive public employee relations legislation are significantly more difficult than problems involving the constraints of management reserved rights on the scope of bargaining. . . .
>
> We have concluded that it is not possible fully to reconcile all the conflicting views over these kinds of scope issues; for it appears that there may be as many approaches to handling alternative systems and conflicting laws as there are differing views regarding both the speed and the extent to which inroads should be made through collective bargaining against civil service systems, the merit principle itself, prevailing-rate procedures, and other alternative or competing methods of establishing conditions of employment. . . .[6]

While the desirable relationship between the civil service system and collective bargaining is not entirely clear, we believe that the basic issue should be resolved by legislation at the same time collective bargaining is authorized. How much weight should the state give to preserving its mechanisms for ensuring fairness in employment and effectiveness in recruiting and retaining personnel based on merit and fitness? Some organization, guiding policies, and effective procedures designed to provide fairness, such as equal-pay-for-equal-work, would seem to be more necessary than ever under collective bargaining.

In essence, the critical ussue is whether public employee relations should be planned or unplanned. MERIC project staff feel that the results of comprehensive planning in the governor's office and in legislative committees would be less disruptive to government and to the public than the alternative of muddling through years of strike negotiations and arbitrator of court decisions.

The example provided in Issue 1.02 (Bargaining Unit Determination) dealt with the comprehensive character and civil service capability of the Wisconsin legislation. The states of Oregon and Washington also have greater provisions for the compatibility of the two systems. As a result of the experience gained in these states, many improvements theoretically could have been made; however, the feasibility of such amendments is reduced now that so much time has elapsed. Unplanned employee rights have been established through contracts that would need to be taken away--a prescription for explosive political controversy.

It is obvious that most states with collective bargaining enabling legislation either have chosen not to take the comprehensive planning approach or have virtually given no consideration to the issue; the latter probably has been more prevalent.

In all states studied, union negotiations have brought about considerable direct and indirect compensation benefits--the total value of which is not excessive, except perhaps relating to some pension plans. At the same time, there was no evidence of any attempt by unions to seek upgrading of the standards for correctional officers or for their improved training. On the contrary, where they were factors at all, negotiations have hindered employee training by requiring that it all be on a paid-time basis (usually overtime at a premium pay rate). And union-supported seniority provisions have resulted in the systematic exodus of the highly qualified correctional officers from the most difficult to the least difficult job assignments.

References

1. Benjamin Aaron et al., Final Report of the Assembly Advisory Council on Public Employee Relations, State of California, 15 March 1973, pp. 155-156.
2. I. B. Helburn and N. D. Bennett, "Public Employee Bargaining and the Merit Principle," Vol. 23 (October 1972), p. 620, quoted in Aaron et al., pp. 159-160.
3. "Collective Bargaining in American Government: Report of the Western Assembly," California Public Employee Relations, University of California, Berkeley, CPER Series 13 (June 1972), p. 14, quoted in Aaron et al., p. 161.
4. Aaron et al., p. 162.
5. *Ibid.*, p. 168.
6. *Ibid.*, pp. 168-171.

Related Issues

1.12 - Organization for Employee Relations

3.02 - Conditions of Work and Employee Safety

3.04 - Affirmative Action and Equal Employment Opportunity

3.06 - Non-Custody Classes

3.07 - Position Classification and Pay Plan

1.10 TRAINING IN EMPLOYEE RELATIONS

Issue: What is an appropriate employee relations training plan for corrections management, supervisors, and employees? How do the characteristics of prison managers affect training needs?

PRINCIPLES FOR ADMINISTRATIVE ACTION

A National Advisory Commission standard states:

> All managers should receive training in the strategy and tactics of union organization, managerial strategies, tactical responses to such organizational efforts, labor law and legislation with emphasis on the public sector, and the collective bargaining process.[1]

Characteristics of Prison Managers

Line administrators are multidimensional, having many different strengths, weaknesses, and personality traits which bear on job performance. Yet some generalizations can still be made. Most correctional administrators have been unprepared for collective bargaining and essentially unaware of its nature and methods. In addition, they have not understood the need for relinquishing some executive powers and prerogatives under collective bargaining.

This tends to be more true of prison superintendents or wardens whose relatively authoritarian rule is sustained by the paramilitary structure of the prison organization. Though rarely trained professionally in public administration, the prison manager has the inherent abilities of a "generalist" administrator since he has learned to direct, supervise, and control not only the security forces, but also the medical, educational, vocational, and counseling services; classification and records; recreation and library; religious activities; prison industries; and the maintenance and repair of an enormous plant and grounds, including culinary services, laundry, procurement and warehousing, budgeting, accounting, and personnel office functions. All serve an operation which functions 24 hours a day, 365 days a year.

Obviously, the superintendent must have a practical understanding of organization and coordination of diverse activities. In dealing with professional executives and with persons responsible for medical, educational, and other services, his style emphasizes leadership and teamwork. Considerations of institutional security usually are more important than productivity.

In contrast to departmental directors, who are compelled to adopt a broader orientation, the prison superintendent usually has limited and short-range objectives. Today and tomorrow are most important. Next year's problems are dealt with through the annual budget request (the "want list"), although, because of repeated disappointments in the past, the superintendent and his staff do not work very diligently at budget preparation. If something is desperately needed, it becomes time to "bend the director's ear," "pass the word to a friendly legislator," and later to do some "pounding on the commissioner's desk." But the focus is on survival, and the words most frequently used are: "we need it to keep control," "we are losing control," or "we have lost control."

Superintendents have some familiarity with the concepts of criminal justice and the goals of correction. But there is very little that the superintendent can do to ensure that criminals are converted into law-abiding citizens, despite his considerable authority within the institution. If the superintendent's staff meeting includes a discussion of rehabilitation planning and evaluation, it will soon return to last night's count, problems of contraband, the latest difficulties with Cell Block A, or the need for replacing broken windows or having the plumbing repaired.

In spite of the hierarchical organization, the superintendent often thinks of the staff as his "team" or even his "family." But the correctional officers, trades foremen, teachers, and counselors do not view themselves in this way. They work for their respective supervisors, who in turn report to the division chiefs. Daily accommodations are not made with great understanding, but they are accepted dutifully. Too many problems are solved (usually by a custodial supervisor or captain) on the basis of their authority alone.

In addition, as in every organization, there will be a group of employees who are unhappy with their work, their supervisors, and the management. Old-timers might be inclined to say: "That's what kind of job it is. Take it or leave it." The current generation of employees, however, would be more likely to turn to the unions to achieve desired changes. This new context requires that management obtain some training in collective bargaining and employee relations.

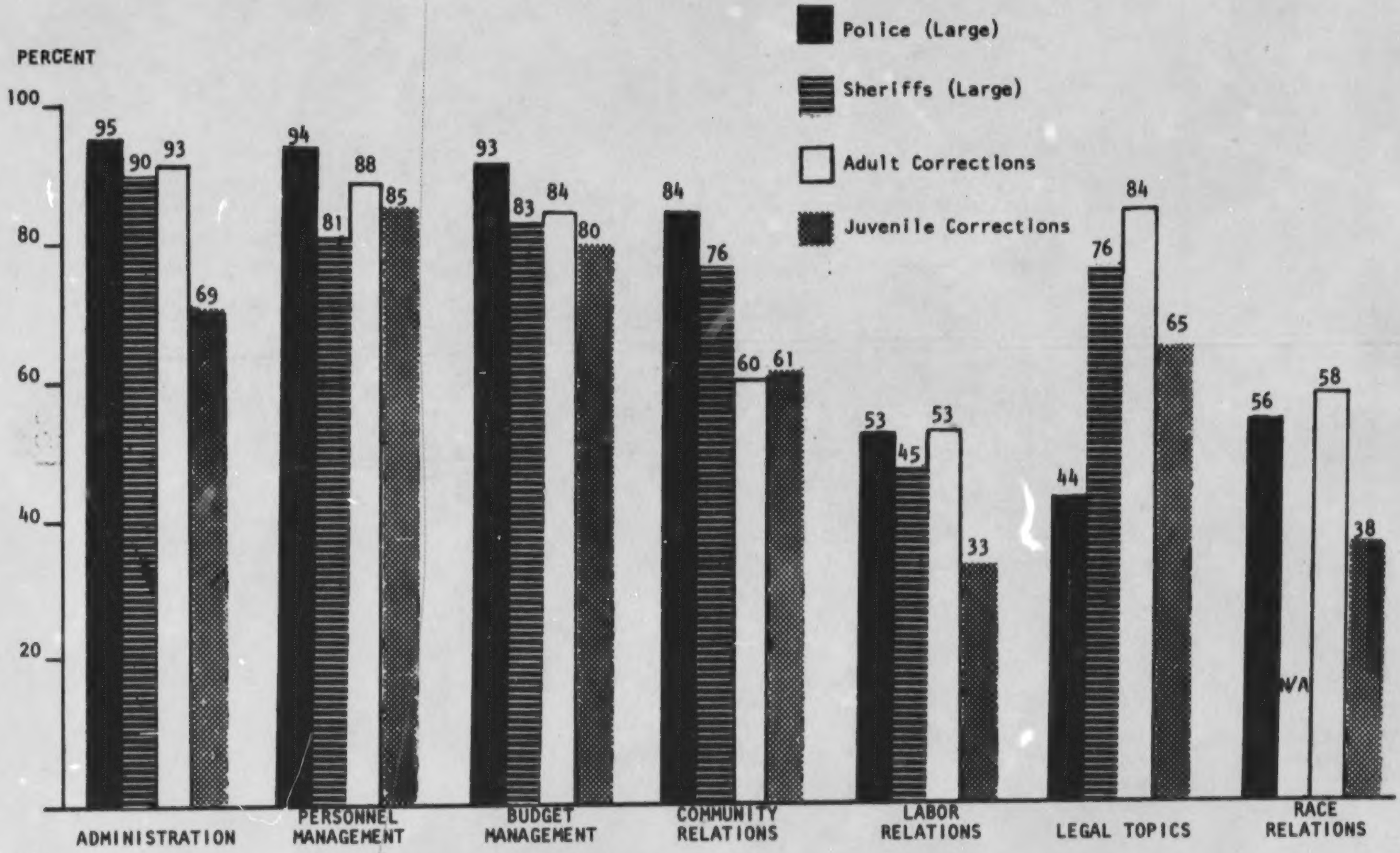
Training Needs

Prison superintendents must have some technical knowledge of the formal collective bargaining process. While some responsibilities will be delegated to staff subordinates and specialists, the superintendent should first familiarize himself with the process before any substantive delegation is made. Since he will be dealing with employees under terms covered by a legal contract, he must be knowledgeable about the content of union contracts, the organizational and administrative mechanisms for negotiation and administration of contracts, and the ways in which contracts can be evaluated for the purposes of renegotiation. Finally, the superintendent will need to modify his management style to facilitate productive relationships among management and union officers, staff, and employee members.

It is encouraging that a national survey reports that criminal justice executives appear to recognize a priority for training in management sciences (see Figure 3). Of particular note, it can be seen from this survey that adult and juvenile corrections administrators have indicated an overwhelming priority for training in personnel management and labor relations if these two subjects are combined.[2]

FIGURE 3

TRAINING COURSES RECOMMENDED BY CRIMINAL JUSTICE EXECUTIVES



(SOURCE: NMS Executive Surveys, 1975)

Recommendations of the Joint Commission on Correctional Manpower and Training

Selected recommendations of the Joint Commission on Correctional Manpower and Training which are pertinent to solving some of the problems previously cited are shown below (marginal comments have been added):[3]

Union contracts may have helped this to happen.

RECOMMENDATION:
Patterns of supervision and administrative control must be constantly reexamined to guard against overly restrictive supervision of employees. To a great extent the ability of corrections to attract and keep competent personnel will depend upon the employee's perception of his potential for self-fulfillment.

Collective bargaining seems to inhibit development.

RECOMMENDATION:
Correctional agencies, especially those in the community, should adopt more flexible work schedules in order to utilize better their manpower and facilities. A rigid nine-to-five office schedule is a needless constraint on personnel time. Greater latitude in scheduling such things as conferences, contacts, home visits, and report writing can also result in a more meaningful level of service to offenders and the community.

Ground has been lost in this area.

RECOMMENDATION:
Corrections must make provision for greater advancement opportunities in order to attract and retain high-quality personnel. Systems should be opened to provide opportunities for lateral entry and promotional mobility within jurisdictions as well as across jurisdictional lines.

Little progress here.

RECOMMENDATION:
Staff promotional policies of correctional agencies should be reassessed to place a greater stress on the possession of knowledge and skills in management processes. Candidates for promotion should also have a demonstrated ability to apply new knowledge and should be oriented toward the implementation of research and planned change.

Good progress with LEAA-LEEP funds.	RECOMMENDATION: Correctional agencies must develop, in conjunction with colleges and universities as well as the private sector, a range of management development programs including degree-oriented course work in administration and management seminars, workshops, and institutes. Efforts should be made to incorporate the latest techniques and technology in these programs.
Little progress; such a plan may produce "wheeler-dealers" who might be more effective in labor relations assignments.	RECOMMENDATION: To broaden the perspectives of promising young correctional administrators, staff development programs should facilitate experience in such special activities as legislative committee work, comprehensive planning, university research, community development, and administrative and management consulting.
Little progress.	RECOMMENDATION: The federal government should make funds available to the states to finance management development programs. Similarly, states should subsidize management development activities in local jurisdictions.
Little progress.	RECOMMENDATION: Correctional agencies at all jurisdictional levels should adopt sound management development programs. In addition to a variety of training and development approaches to increase the knowledge and skills of present staff, consideration should be given to creative management trainee positions with on-going development activities built in.
Little forward motion; concept opposed by employee unions.	RECOMMENDATION: Correctional agencies should utilize more fully the resources of private industry. In areas such as management development, research, basic education, and job training for offenders, the private sector may be able to provide considerable assistance to corrections. Federal and state funding should be made available to correctional agencies to facilitate contracting for those services which might better be performed by private industry.

Training Plan

The content of managerial training should be related to the status of collective bargaining (pending or first contract already concluded) and the scope of bargaining authorized. Table 8 relates training needs to several variables, including organization for bargaining, minimum time required, and status of collective bargaining. A summary of training topics which normally would be covered to some degree in any training course also is provided. In all cases, material and exhibits should reflect local statutes, contracts, organization, and related conditions.

An appropriate training curriculum plan would cover at least those issues presented in Table 8. Under normal training circumstances, with presentation and discussion of each topic, two days would be required to cover the scope indicated. Review of management procedures and style for administration under collective bargaining contracts would require a minimum of one full day. Special presentations of case studies, expert class lecturers, and small group discussion of special topics, such as emergency operations under employee strikes and related job actions, could lengthen training time considerably. The investment of up to one week on this subject would be justified wherever state collective bargaining is imminent or already in existence.

In situations where the state has just completed the initial phase of collective bargaining and a contract has been concluded, the training requirements would be much greater than those shown

TABLE 8

TRAINING NEEDS PLAN

STATE COLLECTIVE BARGAINING ANTICIPATED

TARGET GROUP	TRAINING NEEDS	MINIMUM TIME ESTIMATED
State employee relations staff and other central staff*	Unique problems in corrections, desirable legislation, bargaining units	1 day
Corrections administrators and top executive staff	Principles and practices of collective bargaining in the public sector; contracts in other states; grievance procedures; impasse resolution	2½ days
1st and 2nd level supervisors	Same as above with greater emphasis on grievance and meet-and-confer procedures	3½ days
First-line employees (defer if union organization has already commenced)	Principles of collective bargaining (concisely), pertinent state policies, practices in other states, formation of bargaining units, grievance and meet-and-confer procedures	1 day

COLLECTIVE BARGAINING ALREADY EXISTING

TARGET GROUP	TRAINING NEEDS	MINIMUM TIME ESTIMATED
State employee relations staff and other central staff*	Prenegotiation meeting: review of previous years' problems with the union contract; review of contract evaluation data	1 day
Corrections administrators and top executive staff (includes prison superintendents and assistants)	Provisions of new union contracts (presentation by state employee relations director and staff)	1 day
Alternative to above for large departments: institution-by-institution meetings with top and middle managers	Provisions of new union contracts, with specific application to the respective institution or division	½ day per location for each new contract
1st and 2nd level supervisors	Grievance procedures and other employee relations problems	1 day annually

*May include civil service commission representative, representative from department of administration, personnel division, and budget division.

in Table 8. Depending on the scope of bargaining and the specific terms which have emerged, top management training could require as much as five days. Approximately one week of full-time training also would be required for first- and second-line supervisors and related staff (personnel office, timekeepers, and accounting employees). Very few departments have conducted employee relations training on such a scale, but most have regretted that they did not take the matter more seriously and provide more extensive training.

The unions usually provide a training program for their local officers and shop stewards. Usually few demands are placed on departmental staff except the approval of time off without pay to attend the union training center. Additional departmental cooperation may be desirable, but the initiative to request it usually is best left to the unions.

IMPACT

Most correctional administrators have only belatedly prepared their organizations for collective bargaining. Administrators themselves have been inadequately prepared, generally because they have underestimated the significance of the process until they were enmeshed in it.

For those closer to the operating levels of the organization, such as prison superintendents and their executive staffs, the new requirements are almost overwhelming. In the early period, mistakes often are made on both sides. Union local officials tend to interpret more into some provisions than was intended, while local supervisors and managers tend to accept the union's interpretations and to resist new procedures from which they will later have to retreat. Confusion and frustration abound, and an enormous amount of executive time is diverted to trial-and-error learning about the process and about specific new contract provisions.

In virtually every public jurisdiction in this field, the stance of state correctional management has been largely reactive. Through prior and updated training, correctional administrators not only can minimize the shock of the new process on the organization, but also can prepare for a smooth transition and development of an affirmative role with respect to employees' responsibilities.

Appendix B contains a list of resources for assistance in staff training.

References

1. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 459.

2. National Planning Association, "National Manpower Survey - Criminal Justice System," Washington, D.C., report prepared for the Law Enforcement Assistance Administration, December 1976, Vol. 5.

3. Joint Commission on Correctional Manpower and Training, A Time to Act (Washington, D.C.: JCCMT, 1969), pp. 76-80.

Related Issues

1.12 - Organization for Employee Relations

2.01 - Grievance Procedures, Steps 1-3

2.02 - Grievance Procedures, Steps 4 and 5

1.11 MANPOWER MANAGEMENT IN PRISON ADMINISTRATION

Issue: How can prison administration efficiently deploy correctional staff in situations where most, if not all, assignments are made by seniority selection?

PRINCIPLES FOR ADMINISTRATIVE ACTION

It is imperative that all correctional institutions establish, maintain, and use a post assignment plan for the deployment of all custodial personnel and other staff with custodial duties. It is no less important that all posts have post orders, a plan for keeping them up to date, and a plan for officers in those posts to review the orders on a regular basis. A record of assignment, day-by-day, should indicate the number of the post assigned.

The post assignment plan should correspond to the approved budget and have the written approval of the commissioner's office. The superintendent's authority to change the post assignment plan should be restricted to periods of no more than four weeks. Changes of greater duration should be submitted to the commissioner's office and approved in writing before they can be extended or become permanent.

In addition, the correctional commissioner should attempt to negotiate (or renegotiate) seniority assignment provisions so that management can exercise discretion in the assignment of staff to more sensitive and difficult post assignments. If this change is not effected, management should consider the merits of dividing the correctional officer classification into two grades. (See Issue 3.07, Position Classification and Pay Plan.)

Commentary

The technology of prison administration long ago created the means for reducing to paper the schedule of field decisions concerning where correctional officers should be placed and how these placements may vary from shift to shift and on holidays and weekends. The post assignment plan should be the principal working tool of the captain (a chief correctional officer) as men are needed to cover all posts (including all supervisors up to captain), considering days lost for vacation, sick leave, holidays, military leave, etc. Therefore, it is the basis for preparing the budget for custodial services and for controlling operations in accordance with the approved budget.

In a majority of prisons in the United States, a post assignment plan can hardly be said to exist. Some supervisors remember the "trick charts," and copies sometimes can be found in the accounting office. These were used not as an operational plan, but as a means of convincing the state budget office of the prison's need for more officer positions.

When post assignment plans are not used, there is no need for post orders. Post orders are concise statements detailing the duties of the officer in each post on each shift (e.g., at 3:22 P.M., lock the cell block gate; at 3:27, all prisoners shall be in their assigned cells; at 3:30, assist Post No. 2 by taking count of the north tiers).

Without a post assignment plan used daily by the captain or shift commander, and without comprehensive and up-to-date post orders, it is impossible to know whether manpower is properly assigned or operating according to an approved plan. The result is a constant change of coverage and procedures, repeated irritation to prisoners because routine is upset, and added danger to prisoners and staff because irregular coverage and procedural breakdowns provide opportunities for inmate troublemakers.

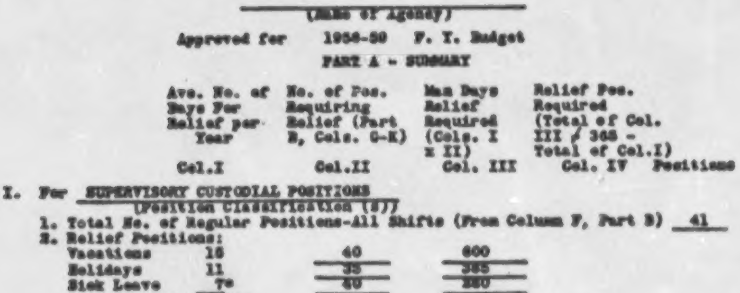
Use of a post assignment plan not only meets the needs of management, but also assists in abiding by the terms of the union contract. One function of the plan will be to determine assignment of officers to posts based on employee requests ranked by seniority. While it is desirable that designated posts will be exempt from such restrictions (as many contracts provide), some contracts require 100 percent of the posts under seniority selection. Additionally, seniority may apply to shift selection (with similar exceptions) and to the offering of overtime work. Seniority in the lower class also is used for selection of temporary replacements of correctional captains, lieutenants, and sergeants who are absent for vacation, sickness, etc. Records must be maintained indicating the seniority rank of officers on duty each day, who was offered overtime and, if rejected, the next individual to whom it was offered. The need is to record management's faithful use of seniority assignment as provided in the contract.

The negotiators for the state, however, may need to know how 200 posts can be covered if 1,000 correctional officers take three weeks vacation a year, as well as other leaves. They may need to understand how the 75 correctional officers hired for 15,000 man-days of vacation relief can be used with vacation selection determined on a seniority basis. (It can be done only if there are no extra officers on duty after all posts are filled.)

With minimal discussion of the subject, the American Correctional Association's Manual of Correctional Standards displays a summary of assignments or posts as a budget form, shown in Table 9 below.[1]

TABLE 9

SCHEDULE OF ASSIGNMENTS OR POSTS



(Name of Agency)

Approved for 1958-59 F. Y. Budget

PART A - SUMMARY

	Ave. No. of Days For Relief per Year Col.I	No. of Pos. Requiring Relief (Part B, Cols. G-K) Col.II	Man Days Relief Required (Cols. I x II) Col. III	Relief Pos. Required (Total of Col. III / 365 - Total of Col.I) Col. IV	Positions
I. For SUPERVISORY CUSTODIAL POSITIONS (Position Classification (s))					
1. Total No. of Regular Positions-All Shifts (From Column F, Part B)					41
2. Relief Positions:					
Vacations	15	40	600		
Holidays	11	35	385		
Sick Leave	7*	40	280		
Regular Days Off	104	35	3640		
	**				
Total, Relief	137		4905	21.81	
3. Total, No. of Positions, Regular and Relief					62.81
4. Total-Per latest budget (explain differences)					[illegible]
II. For NONSUPERVISORY PERSONNEL (Position Classification (s))					
1. Total No. of Regular Positions-All Shifts (From Column F, Part B)					164
2. Relief Positions:					
Vacations	15	170	2550		
Holidays	11	146	1606		
Sick Leave	7*	165	1155		
Regular Days Off	104	141	14664		
	**				
Total, Relief	137		20003	87.73	251.73
3. Total No. of Positions, Regular and Relief					
4. Total - Per latest budget (explain differences)					[illegible]
III. For (Position Classification (s))					
1. Total No. of Regular Positions-All Shifts (From Column F, Part B)					
2. Relief Positions:					
Vacations	15				
Holidays	11				
Sick Leave	7*				
Regular Days Off	104				
	**				
Total Relief					
3. Total No. of Positions, Regular and Relief					
4. Total - Per latest budget (explain differences)					

*Place figure here that gives the best possible estimate, and which is based on the experiences of the past year.

Other established relief needs of agency (specify)

NOTE: PREPARE SEPARATE SET OF POST ASSIGNMENTS FOR PROPOSED NEW POSITIONS AND EACH CLASSIFICATION (Except supervisory positions may be shown as a group)

The state of California and the U.S. Bureau of Prisons (and probably some others) use a plan such as described. The post assignment plan, from which the summary is prepared, would include the details shown in Table 10.

TABLE 10

SAMPLE POST ASSIGNMENT PLAN*

POST NO.	POST TITLE	WATCHES			TOTAL	RELIEF				
		1	2	3		Sat.	Sun.	Hol.	Vac.	S.L.
71	A Wing Officer	1	1	2	4	4	4	4	4	4
72	A Wing Corridor	0	1	1	2	2	2	2	2	2
73	Control Room	1	1	1	3	3	3	3	3	3
74	Outside Patrol	1	0	1	2	2	2	2	2	2
75	Search & Escort	1	2	2	5	5	5	5	5	5
76	Receiving & Release	0	2	0	2	2	2	2	2	2
77	Laundry Officer	0	1	0	1	-	-	-	1	1
78	Industry Officer	0	1	0	1	-	-	-	1	1
79	Rec. Yard Officer	0	1	0.5	1.5	1.5	1.5	1.5	1.5	1.5
80	Ent. Bldg. Officer	1	1	1	3	3	3	3	3	3
81	Hospital Officer	1	2	1	4	3	3	3	3	3
82	Tower 1	1	1	1	3	3	3	3	3	3
	SUBTOTALS	7	14	10.5	31.5	28.5	28.5	28.5	30.5	30.5

*The twelve posts shown would require 58 positions to man the posts for the shifts and reliefs indicated per year.

The post assignment plan should include all correctional officer and supervisory posts as well as noncorrectional positions which must be covered for more than one shift or must be provided with relief for vacation, sick leave, and other absences. Examples of such positions are: laundry supervisors, culinary supervisors, storekeepers, canteen operators, sewage plant operators, and boiler house stationary engineers. In many cases, correctional officers and sergeants are assigned to fill in for the regular employees, but some union contracts place restraints on this practice (e.g., a requirement for compensation at the higher classification whenever an officer performs the duty of a sergeant for more than one week in a calendar year, or a requirement that employees be offered such assignments on a seniority basis). In medium to large prisons, the captain will need an administrative lieutenant or sergeant to stay on top of the post assignment plan and the record of assignments.

The relief schedule must be updated yearly to keep up with actual use. For example, where sick leave was once only an average of six days per year, it may now be twelve days. Thus, the 31.5 employees will require 365 days of relief for sick leave alone. When added to the relief requirements for Regular Days Off (RDO) and holidays, an additional 26 officer positions will be required, totaling approximately 58 positions.

The post assignment schedule probably also will require a new column for relief for authorized absences for union business. Whatever the manpower divisions are, they must be budgeted as shown or there will be a number of posts to be covered on an overtime basis. As employee benefits are further expanded to include more vacation days, election time off, time off for civil service examination and appeals, time off for grievance hearings and appeals, and so on, their replacement costs will increase proportionately.

IMPACT

Typical contract provisions will require a substantial increase in timekeeping records. In one state prison with less than 125 correctional officers, one sergeant and one officer were required on a full-time basis to keep up the assignment plan, the seniority listing, and timekeeping records. Before the terms of the contract went into effect, one sergeant performed this job on a half-time basis.

One correctional sergeant should be able to handle all records and timekeeping work required if provided with a trained back-up and if the second and third shifts maintain good records for the shift (about two hours' work per shift). More efficient methods of preparing and keeping the many records required under collective bargaining are needed.

Reference

1. American Correctional Association, Manual of Correctional Standards (New York: ACA, 1962), p. 183.

Related Issues

1.05 - Funding Contract Provisions

2.05 - Seniority Provisions for Job Assignment

1.12 ORGANIZATION FOR EMPLOYEE RELATIONS

Issue: To what extent does collective bargaining require organizational and staffing modifications? Should prisons have an employee relations staff?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Once the state is committed to a course which will result in collective bargaining for state employees, one or more new positions will be needed in departmental headquarters to provide expert central staff services in this area. Industrial or employee relations specialists usually are not available within the organization, although the personnel officer or one of his assistants may have previously performed some employee relations functions.

A position identified as "employee relations advisor" should be assigned directly to the office of the commissioner of corrections, where direct access to the commissioner is facilitated. The classification level of this position should be approximately the same as that of the departmental personnel officer.

The obvious alternative is to place such a position in the departmental personnel office and to draw on staff time of the personnel office. The employee relations function thus is absorbed as a subfunction of personnel administration and transactions at the departmental level. Probably the reverse would be more appropriate, i.e., to create an office of employee relations and place the personnel office within it.

The structure of state-level employee relations in most states is instructive in this regard. Almost invariably these functions are performed by an office directly under the governor or an office under the central department of administration (which would also have a personnel office, a budget office, etc.). Personnel administration is seen as a function discrete from employee relations.

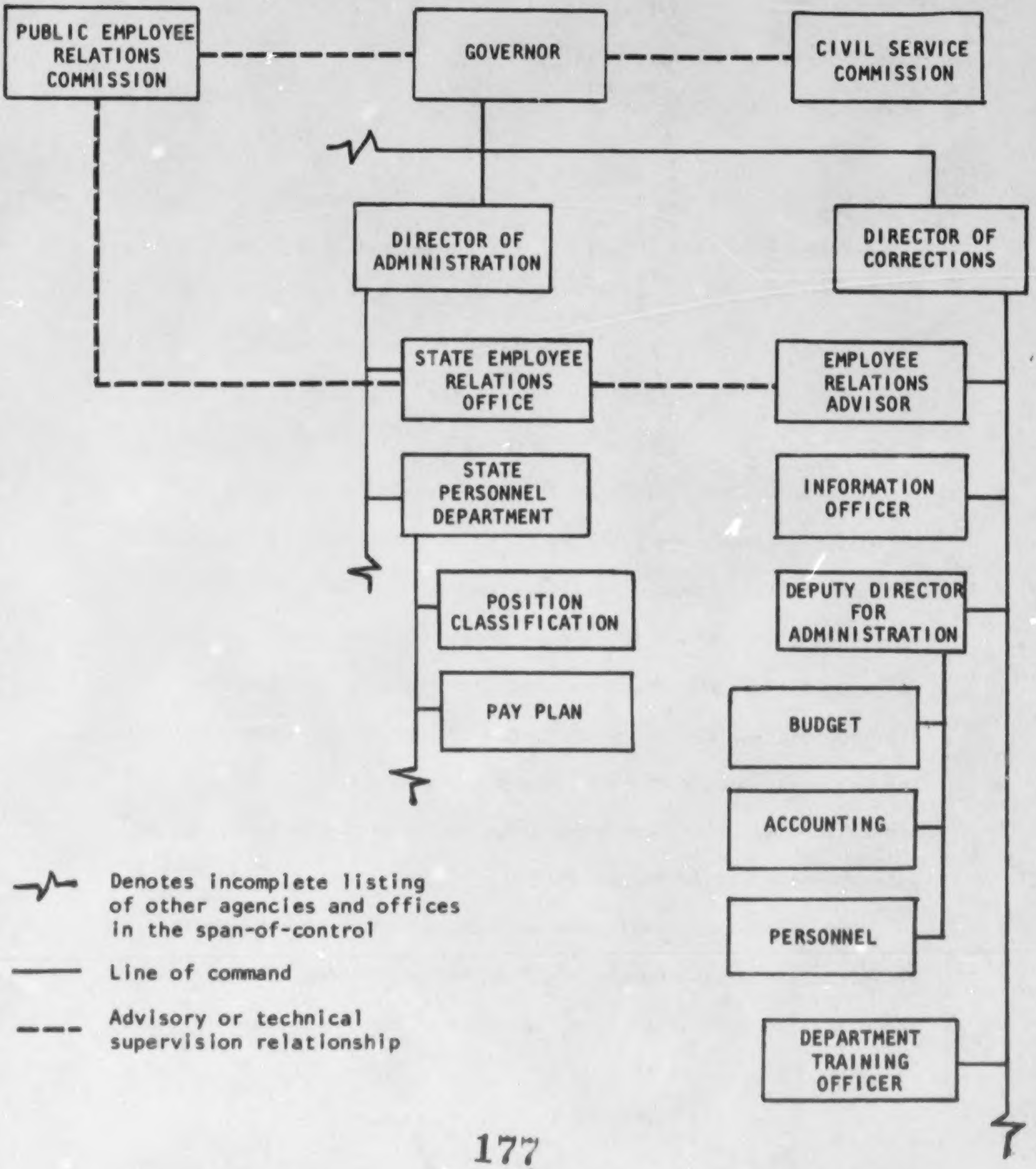
An important consideration in establishing a departmental employee relations office is the placement of the state director of employee relations. Typical state organization for the administration of employee relations is shown in Figure 4. This organization is characterized by policy-responsive, high-level staffing with short lines of communication, and parallel organization between central staff and the operating agency for close coordination.

Seldom, if ever, is the state employee relations director ultimately placed under the state central personnel department, although this may be the initial arrangement. For example, employee relations in Wisconsin remained a personnel function until the passage of the state enabling statute. The statute itself was drafted by the personnel agency, and the author subsequently became the first national president of the AFSCME. In California, a similar transition is in progress with planning for collective bargaining assigned to a staff group within the State Personnel Board. There is, however, a labor relations advisor on the governor's staff.

Once collective bargaining has been instituted, the work of the operating department staff consists of processing a relatively

FIGURE 4

TYPICAL STATE ORGANIZATION
FOR EMPLOYEE RELATIONS ADMINISTRATION IN CORRECTIONS


PUBLIC EMPLOYEE RELATIONS COMMISSION
GOVERNOR
CIVIL SERVICE COMMISSION
DIRECTOR OF ADMINISTRATION
DIRECTOR OF CORRECTIONS
STATE EMPLOYEE RELATIONS OFFICE
EMPLOYEE RELATIONS ADVISOR
STATE PERSONNEL DEPARTMENT
INFORMATION OFFICER
POSITION CLASSIFICATION
DEPUTY DIRECTOR FOR ADMINISTRATION
PAY PLAN
BUDGET
ACCOUNTING
PERSONNEL
DEPARTMENT TRAINING OFFICER
Denotes incomplete listing of other agencies and offices in the span-of-control
Line of command
Advisory or technical supervision relationship

high volume of grievance appeals, consulting with superintendents and other field administrators on matters raised by step 2 review, and considering employee grievances. Departmental staff also conduct the staff analysis and prepare recommendations for the commissioner's approval for step 3 reviews of grievance appeals, consulting the staff of the state director of employee relations as necessary. At step 4, as the grievance appeal goes to the state employee relations office, corrections employee relations staff often are consulted by the state office since these appeals are considered there. Central staff of the department also are responsible for providing continuous feedback on grievance resolutions and procedural effects to the operating units of the department.

Institutional Organization

Most prisons lack the services of a full-time personnel officer; instead, a personnel office under a high-level clerk is responsible for personnel transactions, employee benefit records and transactions and, in many cases, review and consolidation of timekeeping records. This office rarely can adequately handle the new employee relations functions because staff skills are not fully appropriate, and the added workload cannot be absorbed unless a new position is created.

Many institutions place staff responsibility for employee relations functions directly on a high-level executive of the superintendent's staff--often the business manager, sometimes the assistant superintendent for operations (which includes custody functions) and, less frequently, the training officer or the executive assistant to the superintendent.

If a new position can be added to provide this service, it probably would be best to expand the training officer position to employee relations and training officer, reporting directly to the superintendent, and to make the new position an assistant employee relations and training officer, assigned primarily to the in-service training function. This has the advantage of assuring adequate training follow-up to the resolution of employee grievance problems.

Any individual to be assigned the duties of institutional employee relations officer must have substantial training in the job. An appropriate plan would be 3½ to 5 days of training with a group of designated institutional employee relations officers. If the positions are filled on a full-time basis by assignment from the custodial classes, they would merit the classification level of lieutenant in a series where this grade is a shift commander.

Personnel Administration Organizations

The functions of several agencies and commissions related to state employee relations, civil service, and personnel administration have become excessively overlapping as well as fragmented without any discernible benefit to the state employee relations or personnel system. While it is to be expected that in many discretionary matters involving personnel actions there will be provisions for administrative as well as judicial appeal, it is typical to find two or three administrative appeal routes. Intensive study will be needed to resolve this problem in most states.

While the terminology varies in minor ways, it is typical to find the following agencies performing the indicated functions:

Civil Service Commission (or Personnel Board): Conducts or supervises recruitment and examination processes and certifies lists of persons eligible for appointment to the various job classifications. Provides the basis for employment status (temporary, probationary, permanent) and receives and acts on employee appeals regarding status issues. Also hears employee appeals on job classifications and disciplinary actions. Some commissions will also assume most of the functions indicated below for the personnel department.

Personnel Department: Often an office or division of a department of administration and finance. Has responsibility for approving the duties of and classifying positions. Administers the pay plan and conducts periodic studies to keep the plan current by preparing modifications for approval by the legislature. Conducts administrative review hearings on complaints regarding the classification plan, position allocation and staff decisions relating to salary step assignments, transfer rights, and reimbursement for relocations. Usually, there is no provision for higher consideration of appeals denied by this office.

Appointment Secretary, Governor's Office: Usually concerned only with assistance to the governor in filling positions which are exempt from civil service. As such, no overlap is involved. Some offices, however, acquire functions involving investigation of employees and participation in some other policy-level activities of the personnel department or office of employee relations.

Office of Employee Relations (Director of): This office either reports to the governor or to the director of administration. The director of employee relations is responsible for arranging the bargaining units (subject to Public Employee Relations Commission approval), conducting elections, negotiating and renegotiating contracts, interpreting the provisions of contracts to state agencies, and conducting steps 4 and 5 of grievance or impasse procedures (appeals from the decisions of department heads [step 3] and use of fact-finding or arbitration procedures required by contract for resolving impasses). Represents the executive branch in presenting matters before the Public Employee Relations Commission (Labor Relations Board). Usually this office is the top advisor to the governor and represents him in dealing with department heads and union leaders in such matters.

Public Employee Relations Commission (PERC): Reviews and makes final determination on suitability of bargaining units, certifies elections, maintains lists of fact-finders, negotiators, arbitrators, and mediators for selection by union and management in impasse resolutions. Reviews legal issues involved in interpretation of the collective bargaining act and complaints of unfair labor practices by management or unions.

In addition, there may be a state training officer or division, an association or committee of departmental personnel officers, and another association for employee relations officers.

Because the basic personnel functions already exist, it is typical to find departmental employee relations added to the activities of the departmental personnel office. Some personnel officers are competent to direct the employee relations function. However, involving both the personnel office and the training office in the employee relations function is more logical and mirrors the general practice in private industry.

IMPACT

The organizational solution to staffing departmental and operating units for new employee functions will affect the quality of these services. High-level placement of these new functions assures access to top executive decision-makers and more effective relations with union local and state officials, as well as with the state office of employee relations.

Table 11 lists the sixteen research states and the administrative agency for state employee relations applicable to each.

TABLE 11

ADMINISTERING AGENCY FOR STATE EMPLOYEE LABOR RELATIONS

California - Governor's Office of Employer-Employee Relations

Connecticut - State Board of Labor Relations

Florida - Public Employees Relations Commission

Illinois - Office of Collective Bargaining

Indiana - Education Employment Relations Board*

Louisiana - No specific administrative agency

Massachusetts - Labor Relations Commission

Michigan - Department of Civil Service

New Jersey - Public Employment Relations Commission

New York - Public Employment Relations Board

Ohio - No specific administrative agency

Oregon - Employment Relations Board

Pennsylvania - Labor Relations Board

Rhode Island - State Labor Relations Board

Washington - State Personnel Board

Wisconsin - Employment Relations Commission

*In Indiana the Education Employment Relations Board is designated to administer the Indiana Public Employee Labor Relations Act.

Related Issues

1.06 - Contract Administration

1.09 - Civil Service Interrelationships

1.13 - Management Rights

2.01 - Grievance Procedures, Steps 1-3

2.02 - Grievance Procedures, Steps 4 and 5

1.13 MANAGEMENT RIGHTS

Issue: What are management rights under collective bargaining? How can they be protected from erosion through the bargaining, grievance, and impasse resolution procedures?

PRINCIPLES FOR ADMINISTRATIVE ACTION

While some enabling legislation specifically restricts certain management rights, a survey of nineteen state statutes revealed that sixteen had no limitations on the scope of bargaining. The exclusions expressed were concerned with protection of certain aspects of the civil service system.[1]

The issue is somewhat controversial, but the consensus seems to be that collective bargaining begins with management possessing all rights (except as restricted by other statutes, such as civil service restrictions on employee selection and discharge), and that the bargaining process proceeds to develop other restrictions on management rights by conferring certain rights on employees.

Some additional restrictions on the scope of bargaining are needed in state corrections, especially with respect to bargaining which affects the rights of prisoners. Such provisions could be stated as management's a priori position at the bargaining table with employee unions.

A basic concern is the extent to which management allocates employee rights excessively. The fact that state management may be unduly generous at the bargaining table may be explained in three ways:

1. Management probably also will benefit from the improved economic benefits provided employees.
2. Management obtains a political gain--the protection of their own jobs--which sometimes has a higher priority because it is more immediate than the manager's long-range interests in effective public administration.
3. Public sector management has long been conditioned to assume that where their actions are reviewable by the legislature, they can expect a critical and conservative analysis of the issues. Thus, management responsibility is "absolved" because it is shifted to the legislature through its approval of the contract (whether pro forma or not).

The checks and balances on allocation of rights actually are uncertain. Legislative review of state-union contracts is limited, especially as compared to the reviews most new benefit items would receive if submitted as part of a separate legislative bill to increase employee benefits. Such a bill usually would pass through at least two committees, civil service and finance in each house. In contrast, union contracts generally are reviewed by a legislative committee on state labor relations, the membership of which is predictably loyal to the union and its causes. As a result, problems involving reduced management rights and increased employee rights are not subject to very rigorous scrutiny.

Standard Provisions in Union Contracts

The union contract usually contains a declaratory statement on management rights. For example, the Wisconsin contract with AFSCME provides:

Management Rights

It is understood and agreed by the parties that Management possesses the sole right to operate its agencies so as to carry out the statutory mandate and goals assigned to the agencies and that all management rights repose in management; however, such rights must be exercised consistently with the other provisions of this Agreement. Management rights include:

1. To utilize personnel, methods, and means in the most appropriate and efficient manner possible as determined by management;

2. To manage and direct the employees of the various agencies;

3. To transfer, assign or retain employees in positions within the agency;

4. To suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause;

5. To determine the size and composition of the work force and to lay off employees in the event of lack of work or funds or other conditions where management believes that continuation of such work would be inefficient or nonproductive.

6. To determine the mission of the agency and the methods and means necessary to fulfill that mission including the contracting out for or the transfer, alteration, curtailment or discontinuance of any goals or services. However, the provisions of this Article shall not be used for the purpose of undermining the Union or discriminating against any of its members.

It is agreed by the parties that none of the management rights noted above or any other management rights shall be subjects of bargaining during the term of this Agreement. Additionally, it is recognized by the parties that the Employer is prohibited from bargaining on the policies, practices and procedures of the civil service merit system relating to:

1. Original appointments and promotions specifically including recruitment, examination, certification, appointments, and policies with respect to probationary periods.

2. The job evaluation system specifically including position classificiation, position qualification standards, establishment and abolition of classifications, assignment and reassignment of classifications to salary ranges, and allocation and reallocation of positions to classification, and the determination of an incumbent's status resulting from position reallocation.

IMPACT

The impact of certain collective bargaining agreements, such as a reliance on seniority as the sole basis for job and shift assignments, has had the effect of substantially reducing some of the powers of management. The loss of power, or rights to manage, obviously is related to the powers, rights, or benefits given to employees through collective bargaining. Where the rights of these two groups later collide; as in employee grievances, resolution should be a matter for bilateral negotiation with impasses resolved by neutral parties or committees.*

The loss of management rights is particularly acute for managers who cannot easily adapt to the participative management style required of administrators in the collective bargaining context. There also are many situations in contract administration in which the administrator is misadvised of his authority with respect to specific provisions. In many cases, once a procedure is modified in accordance with the employee-union interpretation, it may become a "right" if it can be considered past or current practice. To help avoid these situations, a statement of management rights frequently is written into the union agreement. Such a statement tends to reflect the validity of the *reserved rights doctrine*:

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*There is some doubt that state offices of employee relations can or should be neutral since in most cases they represent the governor's political interest in maintaining union support. However, no viable alternative has yet been developed.

> This doctrine states that in the first instance (before collective bargaining), except as restricted by law, management's authority is supreme in all matters affecting the employment relationship. Collective bargaining then introduces three broad restrictions on managerial authority: first, is the negotiated *written instrument*; second, is the employer's *implied obligation* to maintain for the life of the agreement those employee benefits of long standing neither mentioned in written instrument nor discussed in negotiations; and finally, there is the rule of *reasonableness* whereby managerial action is subjected to the threefold test that it is neither arbitrary, capricious, nor discriminatory. . . . It must be stressed that the doctrine of management-reserved rights is separate and distinct from the management prerogative clauses usually found in statutes, executive orders, and collective agreements. The prerogative clause does not confer on management any reserved rights; such rights exist independently and apart from the bargaining contract.[2]

Management rights thus are reduced in scope by agreements, court orders, and legislation relating to the articulation of both employee and prisoner rights. Implied but not usually stated is the fact that whatever rights are accorded employees or prisoners, and at whatever cost, management remains fully accountable for the performance of the corrections agency, regardless of the effect on these rights. The correctional administrator can be required to deal with a difficult situation resulting from the actions of the state negotiator, the governor, or an aide.

There have been very few instances in which the correctional administrator actually has been denied his essential powers under collective bargaining. However, most administrators do not make full use of the management rights and techniques available to them. For example, in many correctional agencies under civil service systems, discharge or demotion after the initial probationary period is a rare event, except in cases of criminal behavior. Under union contracts, rates of disciplinary discharge or demotion have diminished virtually to zero. Union contracts are almost universally blamed by administrators for employee indifference or resistance to management efforts to develop and maintain work standards and to enforce them through disciplinary actions.

Union management meetings tend to slow down management decision making, but they appear to offer advantages to management in terms of (1) avoiding unnecessary mistakes which union review might reveal and (2) assuring employee acceptance, if not full support, in implementation.

References

1. Irving H. Sabghir, The Scope of Bargaining in Public Sector Collective Bargaining (Albany: State University of New York, 1970), pp. 112-125.

2. P. Prasow et al., Scope of Bargaining in the Public Sector--Concepts and Problems (Washington, D.C.: U.S. Dept. of Labor Public Sector Labor Relations Information Exchange, 1972), p. 6.

3. See also "Management Representation," p. 264, (Issue 2.06).

Related Issues

1.10 - Training in Employee Relations

1.14 - Union Activism in Correctional Program Policy

1.14 UNION ACTIVISM IN CORRECTIONAL PROGRAM POLICY

Issue: Can union activism which goes against state and correctional policy be restrained?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Generally, it is not practical to restrict union interests or actions in any aspect of political, social, or economic policy. With a few exceptions, the standards expected of public sector employee unions should be no higher than those set for private sector unions.

Some protection for the state and for prisoners seems desirable in matters such as:

1. Releasing confidential case files on a prisoner, including, but not limited to, medical records, social history, and psychological evaluations, which could adversely affect a prisoner's right to fair consideration by institution administrators and parole boards;
2. Agitating prisoners and disturbing the tranquility of the prison by public complaint concerning prisoner behavior and working conditions prior to exhaustion of administrative remedies of the contract;
3. Presenting any official position of the union, as opposed to the personal opinions of officers and members, on the retention or selection of the state commissioner of corrections or the prison superintendents.

Background of the Problem

Correctional employee organizations resort to various tactics to increase their bargaining power and achieve the demands of their membership. These efforts are designed to influence not only the

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formal collective bargaining process and contractual agreements, but also areas of administrative and legislative discretion not formally negotiated at the bargaining table. Correctional employees often feel the need to influence administrative and legislative policy in areas outside the scope of the formal collective bargaining process. Issues not satisfactorily resolved at the collective bargaining table also may become targets of employee organization actions independent of the process and schedule of formal state employee collective bargaining.

In the private sector, there is a time of relative harmony between the employer and employees during the effective period of a negotiated agreement. This is not the case in the public sector, where there is no moratorium on informal bargaining over employee concerns. Efforts to achieve employee demands continue throughout the period of contract administration as correctional employee organizations engage in activities which increase the ability of correctional employees to win their demands at the bargaining table and in the larger political arena. These activities include lobbying, publicity techniques, and legal actions.

Lobbying

Lobbying is not unique to employee organizations. State governors and their agency directors actively engage in ongoing lobbying with state legislatures. Private individuals and organizations lobby with both the executive and legislative branches of government for policies and programs favorable to their interests. Thus, it is not surprising that state employee organizations lobby in behalf of their membership with the executive and legislative branches.

Lobbying by employee organizations may be concerned with issues which run the gamut from employee salaries, the location of new correctional facilities, or the revision of the state's criminal code, to the development of collective bargaining legislation more favorable to employee groups. Lobbying occurs prior to the implementation of state labor relations legislation as employee organizations seek to influence the legislative outcome; it occurs during the collective bargaining process in an attempt to exert pressure on the state's labor relations negotiator and to ensure the legislative funding of contract provisions; and it occurs between collective bargaining periods in an attempt to increase correctional officer benefits and to achieve demands not won at the bargaining table.

In some instances, correctional administrators and employee organization officials form a united front to lobby before the executive and legislative branches for issues of joint concern, including increased correctional officer wages, early retirement for correctional personnel, and increased institutional staffing. However, correctional employee organizations and correctional administrators also frequently lobby at cross-purposes. For example, while a correctional administrator is lobbying for increased community program funding, correctional employee organizations may be lobbying against community programs and for allocation of additional resources to institutional staffing and security programs.

The effectiveness of correctional employee organization lobbying is increasing with the dramatic growth in membership of public sector unions. Hundreds of thousands of state employees currently are members of such organizations. The support of employee organizations and their membership for political candidates in terms of votes, campaign workers, and campaign funds can affect the outcome of elections. Not surprisingly, public employees are having an increased impact on political processes in the nation.

An example of the political involvement of public sector unions is reported in a July 1975 article in the Trenton Times which publicized statements by employee organizations during stalled wage negotiations. In this case, AFSCME vowed to use political muscle to push for employment benefits for its membership. New Jersey AFSCME Executive Director Al Wurf "promised to make public a 'legislative enemies list' and criticized [New Jersey Governor] Byrne, who got $17,000 from AFSCME when he ran for governor." The article also reported that the State Employees Association coalition in New Jersey had decided to set up a political action committee and that the president of a Service Employees International Union local declared "if we have to, we're going to elect our own governor."[1]

Lobbying in the political sphere is a prevalent and effective mechanism for both the achievement of employee organization objectives and the development, funding, and implementation of management programs. It is a reality of state labor relations that employee organizations attempt to influence, through lobbying, not only the collective bargaining process, but all areas of governmental operation which are of concern to state employees.

Publicity Techniques

Correctional employee organizations resort to several methods of achieving publicity in order to sway public opinion toward their positions. Attempts to increase public support of correctional employee organization causes puts pressure on state administrative personnel and elected officials to support the organization's demands.

Most employee organizations have a monthly or bimonthly newspaper in which they report items of interest to membership, such as current successes of the employee organization with respect to disciplinary cases and negotiations or statements of employee organization and membership positions. For example, a September 1975 edition of the Washington State Employee, the official publication of the Washington Federation of State Employees, included a special report on what was wrong with the state's adult correctional system. Problems at each of the state's correctional institutions were discussed and union recommendations for action were offered.[2]

Employee organizations also are used to encourage lobbying activities. A May 1975 issue of 82 Review, the official publication of AFSCME Council 82 in New York State, urged all members of AFSCME locals to make a trip to the state capitol ". . . to press their respective members of the legislature for passage of the Heart Bill and the twenty-year retirement bill. Active participation of our people is vital to assure passage of these measures so important to our welfare, this year."[3]

Employee organizations also use the public media to set forth their points of view. Press conferences are a common phenomenon of correctional labor relations. For example, in spring 1975, the executive director of the AFSCME Security Unit Employees Council 82 in New York State held a press conference to protest the governor's plan to close the Adirondack Correctional Treatment and Evaluation Center and transfer the inmates to other facilities throughout the state. The executive director of Council 82 told a crowded room of newspaper, radio, and television reporters:

> The prison system today is in an explosive state. The transfer of these 380 inmates to already overcrowded prisons can only add fuel to the fire. Council 82 warned Governor Carey of the situation last December. We also informed the Governor that we would cooperate in whatever way possible in the area of fiscal responsibility. The announced closing, transfer of inmates, and proposed layoffs of employees represent total fiscal irresponsibility and this union will not be a party to it.[4]

Prior to this press conference, the leader of the AFSCME local at the Adirondack institution indicated that employees would not process inmate transfers and should the employees' authority be usurped by "scabs" the union members would not allow the transfer of inmates out of the center.[5] Under such pressure from the correctional employees' union, New York Governor Hugh L. Carey ordered that the Adirondack institution not be closed.

Another example of the use of the public media by correctional employee organizations occurred in December 1975 in New York City. The leadership of the Correction Officers Benevolent Association announced at a news conference that they had sent a telegram to Governor Carey indicating that the latest riot on Riker's Island caused "millions of dollars in damages and placed the lives of five officers in dire jeopardy." Governor Carey was called on to investigate the riot and to provide guidelines. Correction Officers Benevolent Association leaders indicated to the news media that "our men will not risk their lives in a criminal justice system that is all too quick to make a correction officer a victim and let the inmate go unpunished." The union leaders went on to advocate the need for a departmental policy of nonnegotiation with inmates during a riot situation.[6]

Along with press conferences, correctional employee organizations frequently use attention-getting procedures such as picketing and marches to increase public awareness of their concerns. In 1973, the wives of Massachusetts' correctional officers marched on the governor's office to protest the allegedly dangerous conditions under which their husbands worked. Such a march is designed both to achieve increased media coverage and public support of the correctional employees' demands and to exert political pressure on elected and appointed officials.

Clearly the use of the media to influence public opinion is not unique to correctional employee organizations. Correctional administrators, state labor relations officials, and other appointed and elected governmental personnel routinely use the public media to present their programs and policies and to solicit public support. It is only natural that correctional employee organizations also should turn to the media in an attempt to obtain their demands. In the 1970s, press conferences by prison employees and their representatives are the rule rather than the exception, and the process has become an integral part of the environment of correctional employee labor relations.

Legal Actions

One of the more significant developments affecting corrections in the 1970s is the increased use of municipal, state, and federal courts by correctional employee organizations. The following examples are representative of such legal actions.

> In New York City in 1975, the Correction Officers Benevolent Association sought a preliminary injunction in the New York State Supreme Court to prevent the city from firing 300 correctional officers. At a press conference discussing the suit, the president of the Correction Officers Benevolent Association indicated that New York City's financial crisis "will be replaced with a security crisis in the institutions which will inevitably cost the city money, property, and even lives" if more correctional officers were not hired.[7]
>
> In New York State in 1975, AFSCME Council 82, representing correctional officers, authorized its legal counsel, under the Freedom of Information Act, to seek from the Department of Correctional Services information on:

> the number of correctional officers who had been injured since the Attica riot in 1971; the number of inmates who had been injured by other inmates; the number of critical posts, such as wall towers, that were being closed as a result of budget cuts; the number of riots that had taken place since Attica; the number of escapes; a copy of the departmental budget; and salaries and fringe benefits of the administrators. The union planned to use this information to sue the Department of Correctional Services to upgrade the state's correctional system. Citing the $6.5 million paid out by the Department of Correctional Services in forced overtime in the last fiscal year as representing the need for 600 additional officers in the system, AFSCME Council 82 "lashed out at policies leading to dangerous deterioration of morale and discipline in the state's prison setup" and asked its local union officials to get documented proof of such policies to be used in a lawsuit against the department.[8]

The organization of correctional personnel into unions and associations has enabled the accumulation of funds to sustain group and individual legal actions. Prior to the 1970s, individual or collective suits by correctional personnel against a department of corrections were virtually nonexistent. The proliferation of suits by correctional employees against their employees is but another reflection of the changed administrative environment in corrections. Legal actions by correctional employee organizations are used not only to influence correctional conditions and policies, but to also assist membership in disciplinary hearings, to argue against court injunctions prohibiting correctional employee job actions, and to fight suits brought by inmates against correctional personnel.

IMPACT

Correctional administrators around the country have been disturbed by union political activism in which the following has occurred:

- Correctional unions in Washington, D.C., called for the administrative transfer of the prisons from the jurisdiction of the city to the Federal Bureau of Prisons.
- In several states, correctional unions have opposed correctional halfway house programs on the basis of exaggerated charges of community risk, when their real concerns were with the potential loss of jobs in prisons.
- In several states, correctional unions have opposed legislation supporting sentence reductions, increased parole eligibility, and work release programs. Their opposition was phrased in terms of community risk, but it was clear that protection of prison jobs was the real concern.
- Correctional unions have opposed the recognition of prisoner unions (e.g., in Massachusetts and California).
- Correctional unions have consistently opposed contracting out to the private sector the operation of correctional functions such as food service, laundry, halfway house operation, and prison industry operations.

For the most part, union self-interest in the political issue was clear to the responsible decision-makers--in most cases, the legislature. That these issues could be threatening to the security of many employees and their unions is a fact which should be known to those who must pass on such policies.

Exactly how such matters may be dealt with differently is unclear. Could some be covered under specific grounds for a charge of unfair labor practices since meet-and-confer procedures have not been used and the organizational plan for disputes has been bypassed? Probably not.

There is no legal or ethical way the state can muzzle its employees on policy and political issues, whether they are organized or not. In many ways, the existence of employee unions is advantageous to the state since, in the event of false or slanderous charges by union representatives, the union may be held accountable by civil suit or unfair labor practices.

References

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4. *Ibid*., pp. 1-2.
5. *Ibid*., p. 1.
6. *Corrections Digest* 6, No. 24 (10 December 1975), pp. 1-2.
7. *COBA News*, official publication of the New York City Correction Officers Benevolent Association, July 1975, p. 1.
8. *82 Review*, pp. 1-2.

Also see: (1) American Correctional Association, *Manual of Correctional Standards* (College Park, Md.: ACA, 1966) and (2) Midwest Center for Public Sector Labor Relations, "Employee Political Activity in the Michigan State Civil Service," *Midwest Monitor*, September/October 1976.

1.15 OTHER MANAGEMENT-EMPLOYEE RELATIONS CONSIDERATIONS

Summary

1. Should collective bargaining in the public sector be patterned after the private sector model?
2. Should state and local governments have service delivery options or should all functions be carried out by union/civil service employees?
3. Is binding arbitration an appropriate mechanism for resolving employer-employee impasses in the public sector?
4. How much should public managers know about union officials and staff and their organization?
5. Can there be a code of ethics established to guide management and union officials in their relationships?

Issues and Discussion

1. Should collective bargaining in the public sector be patterned after the private sector model?

AFSCME President Jerry Wurf responds affirmatively:

> No pattern prevails among the 50 states and 80,000 local government units, but there is a single, overriding theme: that public employees are nowhere the equals of workers in private industry. They are second-class citizens.[1]

Commentary: Figure 5 would seem to raise some doubt that public employees are "second-class citizens." Since the base year of this

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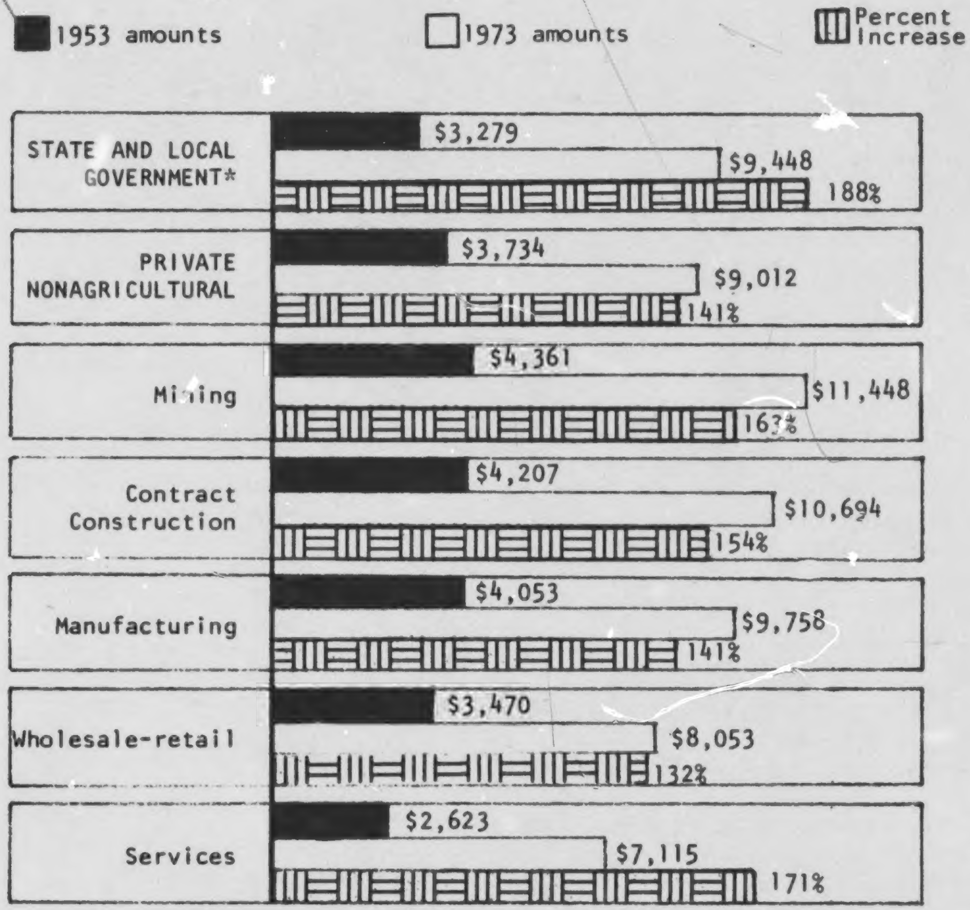
FIGURE 5

INCREASES IN AVERAGE ANNUAL EARNINGS OF PUBLIC EMPLOYEES IN COMPARISON WITH OTHER ECONOMIC SECTORS, 1953-1973

(per full-time employee)



*Excludes employees of government enterprises.

(SOURCES: Department of Commerce, Bureau of Economic Analysis, "National Income and Product Accounts of the United States, 1929-1965," Survey of Current Business, July 1974, Table 6.5, page 37.)

comparison was 1953, some could argue that the inequity was so great that it has taken government workers twenty years to close the gap. The figure reveals that in 1973 the average state and local government worker received less than workers in mining, contract construction, and manufacturing.

Jerry Wurf's affirmative answer regarding the private sector model as a pattern for public sector labor relations merits further discussion. It would seem that if, in fact, the private sector is or was a model for public sector employer-employee relations, then most of the public sector problems associated with it would not be present today.

Private sector unions are particularly active in one aspect of enterprise: production costs. While employee wages, benefits, and working conditions constitute significant costs and major production problems for corporate management, management functions and powers as a whole are hardly disturbed. Using domestic car manufacturers as an example, while labor production cost elements become equalized, cost changes are shifted to consumer price changes--limited to the degree that foreign car competition and consumer resistance become marketing factors.

The corporate manager remains almost totally free from union involvement in product selection, product design and pricing, marketing, new capacity production plans and decentralization, subcontracting, corporate organization (including the selection of directors), capital expansion, and profit distribution.

Comparison of the private sector model with that of the public sector reveals that there have been many unique features added, such as the union's power to elect and to directly influence the government's officers. If these public sector elements existed in the private sector, General Motors would be negotiating with the automobile unions on car design, safety features, advertising and marketing plans, sales prices, dealer commissions, bonuses, discounts, rebates, and so on. In addition, the unions would not only be voting its stock, but they would be seeking proxies as well and attempting to select directors, name corporate officers, and determine dividends.

Accordingly, since the public sector model of employer-employee relations is unique, how, then, could it be said to be patterned after the private model? It could be argued that the private sector model has proved unsuitable for the public sector, that another model already exists, and that extensive modifications in it are necessary in order to achieve more compatibility with American governmental organization, political structure, and the public interest.

Jerry Wurf goes on to state:

> The absence of decent bargaining laws to cover relationships between governments and government employee unions frequently leads to an unhealthy coziness between public officials and the leaders of those unions. . . .
>
> Big city political machines have sometimes drawn upon a power alliance between public officials and the unions that represent public workers. This sort of arrangement works to the detriment of the public services and the public interest.[2]

Commentary: The "unhealthy" relationships observed by the MERIC project team were found just as frequently in those jurisdictions with comprehensive collective bargaining as in those without such bargaining.

Wurf continues:

> There is a critical need for developing a workable body of law for assuring equitable labor-management relations in the public services. The need is not being met, and in my view cannot be met, by state and local governments.[3]

Commentary: This should be a point for national convergence of support.

2. Should state and local governments have service delivery options or should all functions be carried out by union/civil service employees?

AFSCME President Jerry Wurf states:

> Much more commonplace [than political patronage] in 1976 America, however, is a new kind of patronage--a more subtle form of scratch-my-back government in which whole service delivery programs are doled out by contracts with private companies. Frequently those companies have executives who are friendly to the political leadership, but even when that isn't the case the potential for corruption runs high. . . .[4]

Commentary: The potential for corruption runs high in both forms of program service delivery--that is, by contract and civil service/union employees. The major question is whether the advantages of flexibility and economy of service delivery contracts should be ruled out for consideration in the public agencies.

Private sector contracts often make it possible to institute almost immediately a program which could take years to establish under direct governmental operation. Private sector contracts can be readily terminated if the contractor's performance does not meet contractual terms. Yet government management must virtually abandon the idea of closing down a poorly performing public agency's direct service program. Union contracts seriously restrict responses to governmental policy and administrative failures. Direct governmental program costs are often significantly greater than those costs under private sector contracts.

3. Is binding arbitration an appropriate mechanism for resolving employer-employee impasses in the public sector?

Wurf makes the following remarks:

> Our union has been suggesting for some time that we favor the use of voluntary, binding arbitration in employer-employee impasses in the public sector. . . .
>
> Recently, AFSCME endorsed compulsory binding arbitration in public safety strikes. . . . It would eliminate the danger that communities suffer from the disruption of vital services-- . . .
>
> The objective, obviously, of using a form of arbitration to resolve impasses in the public sector is to ward off strikes. The objective is to get the two parties to agree to voluntary binding arbitration before the strike is called, rather than after, when both parties may be in no mood to submit their mutual problems to an outside third party. . . .
>
> The most intransigent opposition to binding arbitration comes from management organizations-- . . . These organizations have always had a morbid fear of sharing responsibility with public employees. They have had an irrational dread of letting an impartial third party enter into labor relations and examine employer policies. They fear unreasonableness more than they fear strikes.[5]

Commentary: Portions of a statement by Charles C. Mulcahy and Dennis W. Rader are presented here:

Binding arbitration can only work to the detriment of local government and the citizenry it must serve. With this tool, unions would be able to effectively hamstring the decision-making process in local government; also, this would allow outside third parties to establish the fiscal priorities in the community. Binding arbitration moves beyond a voluntary settlement and imposes awards on both parties, which are often not acceptable to either side. Arbitration is a substitute not only for strikes but also for the whole process of collective bargaining and the management of local government.

Under binding arbitration, the arbitrator acts as a third party neutral whose decision is final, absolute, and unchallengeable in the courts. The only positive result of arbitration is that it can bring a temporary end to a specific dispute. Whether it really works to solve the underlying problems between the parties is another question. The value of reaching a final decision must be balanced with the price the local community pays for such decisions through loss of control over its own policy and fiscal priorities.

Some simplistic illusions have been built up by proponents of binding arbitration. The procedure is proposed as the final guarantee against all public sector strikes. And yet, experience has shown that unions have engaged in illegal strikes when dissatisfied with fact finders' recommendations and have demonstrated that they will strike when dissatisfied with arbitrators' decisions. (The Montreal police strike of several years ago, for instance, took place under Canada's binding arbitration law.) Most binding arbitration legislation in the public sector covers protective services personnel, and the relatively few strikes in those occupations can be attributed as much to a reluctance to endanger public support as to any respect for arbitration awards. There is no absolute guarantee against strikes, and certainly binding arbitration has not demonstrated its powers to eliminate all strike activities. . . .

. . . How has the availability of arbitration affected the actual negotiation process? The threat of arbitration can result in a voluntary settlement, but under those conditions negotiating becomes less a means of resolving problems than of trying to jockey for a settlement offer which would have been acceptable had the issue come before an arbitrator. Many contracts can be resolved by arbitration or under the threat of arbitration, but the real test

> of the negotiating process is whether that process resolves the problems of both parties. Arbitrated contracts or contracts entered into under threat of arbitration, to the extent that they are the result of forced negotiations, will always be more difficult to administer. Language interpretations will vary between the parties and the parties will be tempted to attain in grievance arbitration what was not obtained through bargaining. . . .
>
> The alternative of binding arbitration is often presented as being "cleaner" and less complicated than public employee strikes. It is argued that arbitration leaves no community scars or resentment, as strikes often do, and that the procedure is a fair and equitable answer to labor peace in the public sector. The values at stake, however, must be carefully balanced. Arbitration provides a short-run solution to long-run problems and seriously threatens local government's flexibility to govern itself. When a substantial portion of local government expenditures and fiscal priorities can be set by arbitrators rather than by the local elected officials, local government becomes a mere façade of democracy. While in theory binding arbitration appears to be fair and equitable, it is a Trojan horse to a local government. Arbitration will supplant grass roots governmental decisions and will stifle citizen participation in government. Local government will be at the mercy of arbitrators who usurp the responsibility of locally elected officials in setting fiscal and governmental policies.[6]

4. How much should public managers know about union officials and staff and their organization?

Through access to public records, union officials and staff have full knowledge of the personalities, administrative styles, and professional backgrounds of management as well as other organizational facts which are of benefit in negotiations. If it can be found that a manager has resigned under pressure from his last two positions, the reasons could be useful as leverage in contested negotiations. His relationships with the governor, the governor's staff, and various legislative committees also may yield useful information which is not difficult to obtain.

Conversely, state negotiators and managers know very little about the unions they work with. They have minimal or no knowledge of the professional background of the union officials and staff, how the union operates, how union staffs are organized, how much they are paid, etc. They do not know how the union spends the funds received from its members. Questions frequently on the mind of the state manager are: "How close is the union to certain key elected officeholders? How much money and manpower did the union invest in their campaign?" Managers sometimes have an exaggerated fear that the union has bought nearly all of the key political figures in the state when, in fact, there may be only a few who have benefited simply from a labor election endorsement. It is this "not knowing" which may frequently lead to miscalculations by management negotiators.

Union members pay between $100 and $120 annually for dues; if the union is national in scope, approximately 60 percent of this amount will go to headquarters. There usually is a similar split on one-time initiation fees. In Pennsylvania where there are over 75,000 AFSCME members, this provides the state and regional offices with an annual income of over $3 million a year, with the national offices receiving over $5 million annually.*

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*The state organization also serves the local government and school district unions whose initiation fees and dues are in addition to the amount indicated of the state government income.

Independent unions and employee associations usually receive somewhat less than national unions. Although this income will remain under local control, there are usually fees to a national organization for information services and specialized assistance when requested.

From this income, the state organizations provide union representatives, offices, and meeting facilities. In addition, various consultants and specialists are employed, or are available, to advise on legal, actuarial, and related issues, e.g., health and dental insurance and retirement.

National and independent unions are reluctant to provide any details about their operations, declining to indicate the number of staff employed or their categories and pay rates. Often, some union employees are represented by other unions, particularly clerical employees who organize to protect their rights and to receive more favorable compensation. For example, in San Francisco, the clerical employees of the Office and Professional Employees International Union, Local 3, went on strike against the Carpenters, Retail Clerks, Plumbers, Laborers, and Operating Engineers. The major issues were reported as being (1) a response to what the clerks see as an attempt by employers to lengthen their 32-hour, 4-day workweek and (2) a pay increase of $.70 over their current hourly rate of $6.00 (from $653.60 to $747.20 a month).[7]

National office functions and activities are less evident. They are not subject to independent audit and public report.

A major cost item for the national offices is the support of organizing staff in yet unorganized state and local government.

It is unknown how much and in what form political support is provided by state and national funds; however, a portion of the sum is in the form of direct campaign contributions.

5. Can there be a code of ethics established to guide union and management officials in their relationships?

Such a plan does not seem feasible, and not one has ever been seriously presented. Public managers are held by union officials to the highest ethics. When a union feels that it has been misled or deceived by a manager, the union may complain to his superior, may treat him as persona non grata, and will seek to bypass him because of the union's lack of confidence in his ability.

Management is sometimes misled by union officials, occasionally by their own naiveté. For example, in Pennsylvania in 1975, a general strike of prison workers was anticipated by the correctional administrators. In a meeting with state union officials, the state asked if the union would agree to allowing striking employees in key positions to return to their jobs; these jobs were designated as electrician, plumber, stationary engineer, switchboard operator, hospital nurse, and culinary supervisor. The state union officials agreed and the department continued with their emergency operations plan as if these employees would be back at work when called. However, the employees would not report back to work during the strike. The decision was theirs to make voluntarily, and in some cases the local union officers simply refused to consider the question.

In this case, management was unaware of (1) how the union operates; (2) the powers of the local officers and of members when a strike is in progress; and (3) the fact that a union state official can provide approval only to the extent that objections would not be raised regarding employee and officer cooperation with the prison administration.

There are some types of conduct by union and management which could be ill-advised. At the extreme, they might be considered as unfair labor practices with appropriate presentation to the state public employee relations commission:

1. Management should not openly or secretly attempt to influence the employees' election of local officers, or in a bargaining unit representational election.

2. Unions should not openly or secretly influence the selection (or tenure) of an appointive public official with whom it will negotiate.

3. Union financial or in-kind contributions to campaigns of elected officials and legislators should be publicly reported by the unions (and by the recipient candidates).

4. Neither unions nor management should be permitted to harrass the other in an attempt to achieve an advantage in negotiations or an election. What constitutes "harrassment," however, may be difficult to establish, with the exception of the most blatant cases. Nevertheless, some attention could be given, with experience in collective bargaining, to questions such as normative and abnormal levels of grievance filings and rejections, news leaks to the media, and lawsuits initiated.

Personal Self-Interest Versus Professionalism

The problem: Correctional officers, through their union, attempt to influence the development of public policy which serves only their self-interest (e.g., compensation, benefits, tenure, job security). Employee organizations are neither professional (where the individual's focus is on the overall mission and his decisions often are unrelated to personal benefits or self-interest) nor managerial (where the focus is on both the overall public mission of the agency and the means for its achievement and decisions often involved with conflicting interests of employees in security and rehabilitation functions and the interests of the prisoners).

Insistent demands by correctional officer unions, expressed through political action, for more security resources to ameliorate conditions which allegedly have resulted in prison violence and other problems have the following effects:

1. Sometimes they are supportive of the management position and thus are helpful.
2. More frequently, however, they represent a simplistic but very expensive "solution" (e.g., more positions or more restrictions on prisoner activities). The dilemma often results in the administrator being forced to accept an inappropriate solution because the issues have been polarized. Opposition to staffing increases or new restrictive policies is interpreted, therefore, as opposition to prison security, public safety, and the safety of prison employees.

Few corrections commissioners have maintained their administrative integrity during such confrontations. In justifying their acceptance of an inappropriate solution, some have reasoned:

"If I have to accept 200 more correctional officer positions and reduce their work at the same time (by restricting prisoner activities and movements), I'll do so now while the issue is receiving so much attention. Later, I'll be able to reprogram the funds or return a savings in a future budget." This plan of action almost never reaches the second stage, especially where union contracts exist and job protection is an important and grievable issue.

As a result, in many prisons around the country, thousands of correctional officer positions are established with little or no justification for their existence. And each year correction departments submit budget requests for new positions--accountants, teachers, records officers, dentists, nurses, plumbers, and so on--which are desperately needed but seldom authorized. In one medium-sized prison, for example, nearly 200 new correctional officer positions were added in 1971 to relieve a serious problem of overcrowding. Since that time, the overcrowding has been eliminated, but the positions acquired for that specific purpose remain. Also, in 1974 after overcrowding had subsided, another prisoner disturbance resulted in a corrective increase of 100 additional correctional officers. The solution was approved, as it often is, without consideration of the previous staffing increases, how the positions were used, or how the new positions would be used. In both cases of staffing increase, the "hidden agenda" of the correctional officers union was the converted use of many of these new positions to finance overtime compensation which had not been controlled by the prison management.

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2. Ibid.

3. Ibid., p. 152.

4. Ibid., p. 153.

5. Ibid., pp. 156-157.

6. Charles C. Mulcahy and Dennis W. Rader, "Collective Bargaining in Public Employment: The County View," in National Association of Counties and International City Management Association, The County Year Book - 1976 (Washington, D.C.: NACo and ICMA, 1976), pp. 157-158.

7. San Francisco Chronicle, 16 November 1976.

CHAPTER II

ISSUES RELATING TO EMPLOYEE BENEFIT PROVISIONS

Correctional administrators and their organizations are ill equipped to perform the tasks for which they are responsible under the collective bargaining process. Quentin L. Kopp, president of the San Francisco Board of Supervisors, has observed that "bargaining now has become a 'back room big labor versus inexperienced politicians' where a chief negotiator bargains behind closed doors. . . ."[1]

The burden of the overall process is not well demonstrated or perceived from a review of the impact of each contract provision. Here, the whole is certainly greater than the sum of its parts. In order to be effective in the context of collective bargaining, correctional commissioners and prison superintendents not only must be appropriately skilled, but also must have management resources to assist them and to prevent their powers from being diminished. While the abilities of correctional administrators vary widely, nowhere are state correctional administrators provided with adequate management support staff. Although this has always been a problem for administrators, it has been aggravated by the introduction of collective bargaining for employees. Almost nothing in the collective bargaining process really helps the administrator to do his job better. The prisoners, who are the reason for the existence of the correctional system, are virtually left out--

their interests are neglected and their welfare adversely affected under the new system of setting priorities for the allocation of existing and new fiscal resources.

Correctional administrators often are reduced to "putting out fires" or responding reactively to matters which others believe need attention. There is too little time, few rewards, and many risks for the administrator who would balance the needs of the correctional system or the institution against the particular needs of employees, plant, and prisoners.

Perhaps this accounts for the extraordinarily brief service of state correctional administrators in the past decade. A review of the issues in this chapter should help management to cope more successfully with collective bargaining and, at the same time, to exercise the full range of management responsibilities expected of the administrator of any state agency. If administrators can do this, they will also serve the long-range interests of employees and their unions.

Reference

1. Bureau of National Affairs, *Government Employee Relations Report* (GERR), No. 679 (18 October 1976), p. B-19. Referred to hereinafter as *GERR*, with appropriate date.

2.00 SALARIES

Issue: Does collective bargaining over salaries and wages result in significant improvements in compensation for the correctional classes?

PRINCIPLES FOR ADMINISTRATIVE ACTION

State salary-setting practices have been discussed in Issue 1.09, Civil Service Interrelationships. The point emphasized was that salary administration is based upon a position classification plan and that, because of the relationships among the various classes, any increase in the pay of a basic working class tends to disrupt the pay plan unless related classes are proportionately increased.

Salaries of the bargaining unit members represent the single most important item of negotiation in collective bargaining. Whether or not salaries are within the scope of bargaining, the unions will devote considerable effort to securing, and obtaining credit for, pay increases granted.

Pay Increases Through Non-Economic Settlements

Over the past several years, inflation and economic recession have caused serious problems in public finance where revenues have fallen while expenditure demands have increased. Under these conditions, most of the sixteen states and the two local jurisdictions researched for this project had planned for minimal or no increases in employee pay, but in most cases ended up with nominal increases in the 3 to 5 percent range. It is unknown whether this would have happened without the vigorous political involvement of employee unions.

In a few states, however, the correctional officer unions obtained pay increases solely for their members while other employees were excluded. In these cases a 5 percent pay increase was achieved through a "non-economic settlement."

For example, in New Jersey, in lieu of a highly visible economic settlement which would have come under legislative and public review, a contract provision recently was entered into with correctional officers which required that they be paid time and a half for an eighteen-minute shift overlap period. A shift overlap is the additional time a correctional officer may be required to stay on duty during a change of shifts. Correctional officers can affect the amount of shift overlap time required. A shift of correctional officers is not officially relieved until every prisoner has been counted. Miscounts can add to shift overlap time. In New Jersey, this additional few minutes' work each day paid at the overtime rate resulted in an increase in correctional pay approximately equal to the employees' initial salary increase demands. However, the effective pay increase did not receive much publicity, nor did it require direct legislative approval.

A similar situation in Pennsylvania produced the same results--a "non-economic settlement" of 5 percent over the general 3 percent across-the-board increase approved for all employees.

At issue here is the integrity of the collective bargaining process. Granting salary increases by changing a work rule and "hiding" increased salary expenditures within an increased overtime account clearly subverts the system of checks and balances found within most legal frameworks for public sector collective bargaining. Unfortunately, such administrative manipulation often is considered good public sector management. In a political environment of adversary relationships (not only among departments within the executive branch, but also between the executive and legislative branches), the pragmatic public manager often attempts to achieve program and political goals by taking advantage of legal and administrative loopholes. The apparent ascendancy of such an orientation toward program implementation rather than integrity of process is in need of searching review.

Direct and Indirect Compensation in New York City

The contract between the Correction Officers Benevolent Association and New York City offers some excellent examples of "hidden" economic benefits. From a basic salary and fringe benefit package won at the bargaining table, correctional officers in New York City have achieved more than correctional employees in any of the states researched. An executive of the Correction Officers Benevolent Association indicated that the reason for their success was that most of the benefits were not readily visible. The October 1975 contract set the basic correctional officer salary in

New York City at $17,458 annually.[1] The contract called for an automatic cost-of-living adjustment for each four-tenths of a point increase in the U.S. Department of Labor's consumer price index for urban wage earners and clerical workers. In addition, for each five years of service up to twenty years, correctional officers receive longevity adjustments of $100 a year. They also receive eleven paid holidays annually; one personal leave day; unlimited sick leave for the full period of any incapacity due to illness, injury, or mental or physical defect, whether service connected or not; four leave days with pay if there is a death in the family; 30 days annual paid military leave, if required; and, after three years of service, 27 paid vacation days each year.

In addition, New York City provides a choice of fully paid health and hospitalization insurance plans for each employee and a security benefit fund of $400 per employee every year which is paid to the Correction Officers Benevolent Association (COBA). COBA, using these funds, provides correctional officers with additional benefits such as life insurance, a dental plan, a prescription drug plan, supplemental hospital emergency room benefits, and legal services.

Along with these other benefits, New York City contributes to a personal annuity fund for each correctional officer at a rate of one dollar per day up to $261 every year. The annuity fund contributions provide a lump-sum benefit to the correctional officer in the event of termination of employment for any cause or as an annuity at retirement. In addition, at the time of the research for this project, New York City was also picking up the full share of employee contributions to the retirement fund.

In addition to these economic gains, New York City's correctional officers have won other benefits at the bargaining table. During contract negotiations in the early 1970s, the Correction Officers Benevolent Association demanded an 8½-hour work schedule rather than an 8-hour shift. City police recently had negotiated an 8½-hour shift at the bargaining table, and the correctional officers' union had an agreement with the city that its members would have parity with police officers. The director of the New York City Department of Corrections opposed an 8½-hour work shift, indicating that it would result in a need for 6.25 percent more personnel to cover the same number of job assignments. The correctional officers insisted that New York City honor the parity agreement. They recognized that 8½-hour shifts would result in an extra 16 days off annually at the same salary. In addition, correctional officers could choose to work, at overtime pay, some or all of those 16 additional days off, thereby increasing their annual take-home pay. Without granting the Department of Corrections any budgetary relief, the city agreed to the demands of COBA. The impact on the operation of the New York City Department of Corrections was to significantly increase overtime expenditures as management attempted to retain previous staffing levels.

New York State Pay Negotiations

The New York State Department of Correctional Services, recognizing the serious consequences of the flight of senior correctional personnel from inmate contact jobs, entered into a contract provision with the correctional officers' representative which called for the bilateral development of a career development program.[2] One recommendation of the union membership on the labor-management committee was that a differentiation should be made between correctional officer jobs with inmate contact and those without such contact. The unions recommended that correctional officers working in non-inmate-contact positions, such as the perimeter towers, should be paid the current salary levels, while correctional officers working in inmate contact positions should receive a one or two state pay grade raise in compensation. Although such a plan might well decrease the flight of personnel from inmate contact jobs, it amounts to a significant pay increase for a majority of correctional officers and, in effect, raises the level of correctional officer pay relative to other job titles within the state service.

The need for such an economic incentive to ensure that sufficient numbers of experienced, qualified officers bid into inmate contact positions has resulted from contract provisions allowing for job bidding based on seniority. Under a non-seniority system for job bidding where job assignments are made by correctional managers, personnel can be placed in positions where their experience can be most effectively used. With both a seniority job-bidding system and an economic incentive program for inmate contact jobs, such as the union proposed to New York State, correctional officers with seniority can choose to work in the more demanding positions for more pay. Since most correctional officer positions involve inmate contact, the net result of these provisions would be to significantly increase the average correctional officer's pay.

Police - Correctional Officer Salary Parity

Over the past 25 years, correctional officer or prison guard associations have nurtured the conviction that their work is similar to that of the police. They "police" the prison and they deal with more criminals in a day than most city police do in a year or more. While rarely sworn peace officers, they usually have the powers of peace officers in the pursuit and apprehension of escaped prisoners. Although they do not carry weapons in the prison, except in the gun tower or gun walk posts, many if not most feel justified in carrying side arms in their off-duty hours, as do the police. In the past, correctional management has never officially recognized such a need and has had only limited success in discouraging the practice.*

The significance of carrying side arms for correctional officers is at least partly a justification of salary parity with local and state police. Such parity actually is obtained only rarely;

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*In New York City, however, the City Council has authorized the possession and carrying of firearms by city correctional officers.

New York City is one example. In Massachusetts, due to political pressure on the legislature expertly applied by the state correctional officer unions, pay increases have been granted which make correctional officer salaries very close to those of police in the state and urban areas, above those in many smaller cities, and higher than correctional counselors and psychologists (who must have college degrees, plus graduate education and prior work experience).

There are many methods by which personnel classification technicians can evaluate different classes which are unique to public service in terms of relative "worth." The usual method is factor analysis, whereby common aspects of two classes are systematically compared, for example, in terms of:

- Degree of independent action;
- Degree of skill required to carry out typical duties;
- The consequences of error or mistakes;
- The likelihood of errors;
- Public contact reponsibility (in representing the employing agency to the public);
- Education and training required to exercise the most difficult tasks.

Evaluations, which are expressed on a scale of, for example, 1 to 5 (least to highest), are made by neutral persons who are informed of the essential aspects of both jobs. The results are invariably that city police officer work is considerably more responsible and difficult than prison correctional officer work. (Factor analysis also finds the work of the fire department hoseman less responsible and difficult than that of police officer, yet salary parity is almost universal because a political solution generally is imposed.)

The dilemma, therefore, is that the typical state correctional administrator appreciates the need for a state salary which attracts and retains competent correctional officers. This usually is somewhat more than is now paid. There is a type of marketplace factor at work here, too. At the point of recruitment, firemen, patrolmen, and correctional officers are nearly equal in general qualifications. The group that is paying the most is likely to get the pick of the available pool of recruits.

The administrator also is apprehensive about the impact of the development of a police officer role model in the prisons. The need for security already has forced prisons to adopt many of the characteristics of a "police state"; and reforms generally have been directed toward changing that image. Efforts have been made to operate and to modify the role of the correctional officer by increasing his involvement as a counselor or supervisor of prisoners. Acknowledging the similarities between correctional officers and police may tend to work against such reforms.

Career Income Concept

This approach is both the most logical and the most difficult means of establishing long-term comparisons between unique public service positions and private sector counterparts. From the union's perspective, it provides the broadest latitude for negotiation.

Basically, the idea is to estimate the earnings in the private sector which a person entering state work would have achieved over five, ten, and fifteen years. An analysis of the desirable type of recent recruit (e.g., a correctional officer) might include high school graduation; I.Q. in the 100-110 range; a vocational aptitude (using a standardized test) indicating strong interests in sales, mechanical service industries, and public service; a mildly extroverted personality; and moderately conservative life goals. (Of course, many other factors can and should be included.) Private sector occupational groups then are searched for at least several individuals who compare closely with the profile developed. They must be of substantial numbers in each group and be drawn from numerous employers. With a reasonable match, on a confidential basis, actual salaries are tabulated by the number of years worked. Thus, an inter-quartile range of rates and the median rate are determined from the grouped data for each five years of service:

- 5 years - includes all with 4-6 years of experience
- 10 years - includes all with 9-11 years of experience
- 15 years - includes all with 14-16 years of experience

The data can then be established as the salary rates (range) for a correctional officer where:

1. The 5-year range matched with the nearest state salary range;
2. The 10-year range matched with the state range for the senior correctional officer class, if there is one. Otherwise, both the 5- and 10-year rates must be merged to apply to the base class;
3. The 15-year range is matched with the state range for correctional sergeant or, in some cases, lieutenant.

Once established, the rates are adjusted annually by the percentage increase in a stable benchmark, such as the annual earnings of factory workers as reported by the Bureau of Labor Statistics.

Many years ago, this technique was used to derive police officer salaries in Los Angeles. It is likely to be used much more extensively in the future.

Other Salary Comparison Bases

In public service work, productivity rarely is a factor in calculating compensation. In correctional work, for example, there are only a few activities susceptible to such measurement (e.g., culinary, laundry, and prison industries); with others, such as security and counseling, the activity itself rather than its product is all that can be measured. In counseling and casework, one of the few ways in which a position can be increased in value is to reduce the size of the caseload--thus reducing the amount of work--so that the caseworker can perform more in-depth, professional casework more frequently and with fewer clients.

Correctional officer pay increases over the past 50 years have been tied primarily to the shift in job content--from "prison guard" to "correctional officer" as prison management has sought to upgrade the qualifications of the correctional officer to permit broader, more constructive use of this class in prisoner supervision and counseling. During this period, increases were quite substantial but seldom produced a significant change in the educational and intellectual capacities of correctional officer recruits. Significant exceptions occurred in the late 1930s and in the early 1970s in certain areas where high unemployment levels brought an influx of college graduates to some prisons.

In 1941 Kenyon Scudder opened the California Institution for Men at Chino, near Los Angeles, with an extraordinary group of correctional officers who, within ten to fifteen years, were the core of the reformed and revitalized California Department of Corrections. Similarly, the high unemployment rate in the Boston area in 1972-73 attracted substantial numbers of college graduates into the Massachusetts Department of Correction. In this case, however, poor management and powerful unions in the prisons soon discouraged most of the new correctional officer recruits who left as fast as they came in and had no discernible impact on the service.

Multi-tiered Bargaining

The concept of multi-tiered bargaining was presented in Chapter I (Issue 1.02, Collective Bargaining Negotiations). In direct salary negotiations at the bargaining table, correctional unions will present various supporting data, particularly those which will justify the largest increase. Such data normally include:

- Other state/city comparisons, eliminating jurisdictions with lower salaries;
- Salary comparison with cost-of-living changes;
- Various data indicating a loss of ground in comparison with other noncorrectional classes (e.g., local and state police);
- Tabulations of prison disturbances, assaults on personnel, etc., to demonstrate that the work has become more hazardous and more difficult;
- Recapitulation of unusual working conditions, such as shifts, weekends and holidays, overtime, callbacks, and shift overlaps, which individually or as a package are deserving of a more generous pay allowance.

The state negotiator responds with data which tend to refute the union's claims. Concurrently, at a higher level, private union-management discussions probably will be held to develop a compromise solution involving a mutually acceptable across-the-board increase with union support of the financing plan. Also, the governor's staff and union officials may be meeting privately with several key legislators to obtain their support of compromises in both pay increases and revenue-raising plans.

When a pay increase demand is finally "won" at the bargaining table, few people there--and none of the outside observers--will have any idea of how the negotiating impasse was broken. There is little to suggest that it might be different in better economic times, except that the dollar range of negotiations could be considerably higher.

IMPACT

Correctional unions negotiate for many types of salary and economic benefits. In cases where the economic gain is highly visible and submitted as a package to the appropriate legislative body, adverse operational effects on the correctional system are minimized. Although increasing expenditures on correctional personnel--the majority of whom are correctional officers--tends to reduce the state resources available for other correctional budgetary categories, the decision-making process is basically governed by the checks and balances of the political system.

Nonetheless, economic settlements entered into by the executive branch and approved by the legislative branch often are not clearly understood by the public. For example, an elected official may announce that the state has firmly rejected a salary increase for state employees without drawing attention to the fact that one component of the contract settlement was the state's assumption of employee contributions to a retirement plan. The assumption of employee retirement contributions is an indirect pay increase since it reduces employee expenses and increases take-home pay; however, it is less subject to public scrutiny and its full effect on tax rates may not be felt for years.

Successful union lobbying for higher salaries for correctional officers can be very trying for the correctional manager if achieved results distort internal pay relationships, make it difficult to attract workers in needed specialty classes, and cause a shift in prison climate to one of domination by a single employee group.

References

1. Agreement Between the City of New York and the Correction Officers Benevolent Association, effective October 14, 1975.

2. Agreement Between the State of New York and Security Unit Employees Council 82, AFSCME, AFL-CIO, effective 1972-74.

*Note: Pages 205-209 are taken from the MERIC final report, Prison Employee Unionism: Its Impact on Correctional Administration and Programs, by John W. Wynne, Jr.

2.01 GRIEVANCE PROCEDURES, STEPS 1-3

Issue: From the administrator's perspective, what problems are involved in the standard management-union grievance procedure?* How could they be avoided?

PRINCIPLES FOR ADMINISTRATIVE ACTION

All managers and supervisors should fully understand the contract, receive training in how to handle their responsibilities in making the grievance procedures work, and know who and when to consult on interpreting the contract and departmental policy and how to recognize and deal with matters of significant fiscal impact or precedent.

The grievance procedure is the heart of the continuing management-union relationship once negotiation of the contract has been concluded. While there are always some variations of the specific grievance procedures from state to state, most are composed of five steps** which, in corrections, are as follows:

Step 1 - Immediate supervisor of grievant

Step 2 - Prison superintendent

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*The discussion here is limited to grievance steps 1-3; steps 4 and 5 are covered in Issue 2.02.

**An exception can be found in the Wisconsin-AFSCME contract which calls for four steps (compressing steps 2 and 3). There are some advantages to a four-step plan since it is the predominant practice of the unions to continue to appeal grievance rejections at any level short of the last step. In a well-trained and experienced organization, it would be unlikely that the department head would want to negotiate a grievance since his policies in most cases could have been considered at step 2.

Step 3 - Corrections commissioner

Step 4 - State director of employee relations

Step 5 - Fact-finder, mediator or arbitrator

The Pennsylvania-AFSCME contract provides a straightforward statement of grievance steps 1-3. The first section is extremely useful in avoiding the problem of parallel appeal routes.

> A Civil Service employe may process his grievance through either the Civil Service appeal procedure or the contract grievance procedure. If an appeal is filed under the Civil Service appeal procedure while proceedings are taking place under the contract grievance procedure, then the contract grievance procedure shall cease and shall not be permitted to be reinstituted. If an appeal is filed under the Civil Service appeal procedure, the employe shall not be entitled to institute proceedings under the contract grievance procedure, all rights to do so being waived by the exercise of an option by the employe to utilize the Civil Service procedure.
>
> Any grievance or dispute which may arise concerning the application, meaning or interpretation of this Agreement shall be settled in the following manner:
>
>> Step I. The employe, either alone or accompanied by the Union representative, or the Union where entitled, shall present the grievance orally or in writing to his immediate supervisor within 12 days of the date of its occurrence, or when the employe knew or by reasonable diligence should have known of its occurrence. The supervisor shall attempt to resolve the matter and report his decision to the employe, orally or in writing, within seven days of its presentation.
>>
>> Step II. In the event the grievance is not settled at Step I, the appeal must be presented in writing by the employe or Union representative to the head of his division, bureau, institution, or equivalent organizational unit within seven days after the supervisor's response is due. The official receiving the written appeal, or his designated representative, shall respond in writing to the employe and the Union representative within seven days after receipt of the appeal.

> Step III. An appeal from an unfavorable decision at Step II shall be presented by the employe or Union representative . . . within seven days after the response from Step II is due. The agency head, labor relations coordinator or labor relations officer shall respond in writing to the employe and Union representative within seven days after receipt of the appeal.[1]

Step 1

Normally, step 1 is handled as an oral communication and the written process begins at step 2. It is difficult to determine the extent to which step 1 is productive of grievance resolution. Nonetheless, it is desirable that this step be undertaken in some convenient manner--such as a note in the shift log--which could be recapped monthly or quarterly for a captain's report to the superintendent. In some cases, however, the supervisor may not even recognize the employee's question as a grievance.

Step 2

Step 2 is formalized in writing and, in many cases, discussion with the superintendent will involve a union officer as well as the employee. Some preliminary discussions may be held with the superintendent's representatives (such as the assistant superintendent-operations, business manager, or personnel officer) before meeting with the superintendent. The participation of these staff members is useful to all concerned since it enables the superintendent to appreciate the relevant aspects of the issue before attempting to solve the problem. Frequently, staff reviews produce a recommendation for favorable resolution even before the superintendent has become involved. However, it is generally advisable that an official meeting with the superintendent take place, so that the superintendent is personally aware of the grievance and can respond directly to any dissatisfaction of the employee with the solution offered.

At step 2, an employee relations officer may have called the departmental specialist in this area for comment, information, or counsel on the problem. While this contact may be perceived as a prejudgment of the issue before it reaches the department head at step 3, it may provide assurance to the superintendent regarding any precedent set for other institutions or other bargaining units.

The data collected in prisons on the disposition of step 2 grievances is inadequate in most states. One of the union techniques for retaliation against an uncooperative management is to flood the grievance system. This would, of course, be noticed without better step 2 records and analysis. On the other hand, areas of low employee morale and aggressive local officers may be pinpointed by inter-institutional comparisons and trend analysis.

Meet-and-Confer

While meet-and-confer between management and union is not usually described as a part of the grievance procedure, it can be used as a less formal process in grievance resolution. Under this system, with the agreement of local union officers, a regular (once or twice monthly) meet-and-confer session of officers and representatives and the superintendent's staff is held. (It may take the place of the superintendent's regular staff meeting for that week.) Meeting and conferring on institutional affairs, plans, and problems and general information-sharing can take place with time allotted for presentation and brief discussion of step 2 grievances. Step 3 will remain to deal with appeals to step 2 decisions.

Many grievances can be resolved immediately through the meet-and-confer process, while others will be reserved for further staff review and disposed of at the next meeting or sooner. The seven-day requirement for written response may not be adhered to under this arrangement, as long as union officers agree that this procedural modification is in everyone's best interest. It is advisable, however, to obtain agreement in writing on this procedural modification after a month of trial with this system.

Success in meet-and-confer and grievance resolution depends upon developing cooperative and trusting relationships. Deceptions, game-playing, procrastination, or promising more than can be delivered on either side will seriously hamper resolution of problems. The immediate solution is return to the formal procedure of the contract and strictly adhere to the time schedule.

Step 3

Step 3 involves the commissioner or director of the corrections office. While the appeal is to the department head, it is usually routed to the executive who acts as the departmental director of employee relations. In this office, appeals are logged in and then assigned for review and recommendation. The seven-day time schedule for response is almost invariably met; when it is not, the employee, local union officers, and state/regional union officers are notified and the reasons for delay as well as the anticipated completion date are specified.

In nearly all cases, some additional information on the appeal is needed. The department employee relations director or his assistant may call the superintendent directly or his counterpart on the superintendent's staff. Where there are substantial technical concerns in step 3 (e.g., the effect of a post assignment or post order modification necessary to deal affirmatively with the grievance issue), the departmental supervisor of institutional or security operations may make the step 3 review and recommendation. In other cases, the personnel officer, accounting officer, or food manager may be consulted. If there are questions which need clarification from the employee, the best line of communication is through the local president or the officer who represented the grievant. His name will be on the appeal form.

The analysis and recommendation on each appeal is presented to the commissioner. A few may be approved immediately and a meeting with the union will not be necessary. Since there are likely to be many that will be denied, union representatives and employees generally are scheduled for meetings with the commissioner. Each case is taken up in turn. The union is provided an opportunity to make a brief presentation; the commissioner may ask a few pertinent questions, and his decision announced before the next case is taken up. In a few cases, an additional perspective on the case may justify the commissioner's putting the case aside for later decision.

The description of the relatively obvious nature of step 3 procedures is intended to highlight certain ritual aspects of the process. It is important to perceive the need for visibility to employees of the activities of union elected officers and salaried staff in the furtherance of employee interests and the defense of negotiated contract provisions. Winning a grievance issue is more satisfying where there is some confrontation of management authority.

A case in point: In 1975 in New Jersey, the cottage supervisors (female employees) and the correctional officers (male employees) in the now-coed Women's Correctional Center grieved the inequity of the women employees who performed identical tasks to those of the male employees but were paid two salary steps (10 percent) less. The superintendent forwarded the grievance, supporting it but properly recognizing that relief required either classification consolidation or a salary range change for the women's cottage supervisor class--an action for the Civil Service Commission. The commissioner agreed fully with the recommendation and was prepared to submit the matter to the Civil Service Commission. As this was a grievance, however, a copy went to the union president who discussed the matter with the state employee relations director. His response was to advise the commissioner to hold up his approval and submission to the Civil Service Commission so that the grievance could be taken up for trading at the next contract bargaining session (over a year in the future). When interviewed only a few days later, the commissioner was in a quandary; he faced loss of confidence of the employees involved for failure to take prompt administrative action in their behalf, and thereby would let the union receive credit for getting the problem corrected.

As grievance appeal steps 4 and 5 are considered in the following issue, it may be appreciated why such a high proportion of step 3 appeal rejections are further appealed to the higher steps.

IMPACT

The impact of the grievance system may be the formalization of an adversary relationship between management and employees. Such a struggle can be distressing to the organization; for the superintendent, it can entail a great diversion of his time. If the internal discipline of the organization breaks down, the function of the prison is weakened. Manipulative prisoners engender suspicions and antagonisms, while other prisoners who are adversely affected by changes in staff attitudes and demeanor or minor changes in activity and programs become more discontented and vulnerable to agitation by militant prisoner elements.

Reference

1. Agreement Between the Commonwealth of Pennsylvania and AFSCME, AFL-CIO, effective 1 July 1973 to 30 June 1976.

Related Issues

1.03 - Contract Evaluation

1.06 - Contract Administration

1.10 - Training in Employee Relations

1.13 - Management Rights

2.02 - Grievance Procedures, Steps 4 and 5

2.02 GRIEVANCE PROCEDURES, STEPS 4 AND 5

Issue: What determines how these appeal steps work out? What could be done to reduce the operational impact of "poor" decisions at these levels which are well beyond the control of the corrections department?

PRINCIPLES FOR ADMINISTRATIVE ACTION

The contents of appeal steps 4 and 5 are represented by the Pennsylvania-AFSCME contract provisions.

> Step IV. In the event the grievance has not been satisfactorily resolved in Step III, written appeal may be made by the employe or Union representative within seven days of the Step III decision to the Secretary of Administration . . . and shall contain a copy of the Step II and Step III decisions. The Secretary of Administration . . . or his designee, shall issue a decision in writing to the Union within 12 days after receipt of the appeal.
>
> Step V. An appeal from an unfavorable decision at Step IV may be initiated by the Union serving upon the Employer a notice in writing of the intent to proceed to arbitration within seven days after the response from Step IV is due. . . .
>
> The arbitrator is to be selected by the parties jointly within seven days after the notice has been given. If the parties fail to agree on an arbitrator, either party may request the Bureau of Mediation to submit a list of seven possible arbitrators.
>
> The parties shall within seven days of the receipt of said list meet for the purpose of selecting the arbitrator by alternately striking one name from the list until one name remains. The Employer shall strike the first name.
>
> Each case shall be considered on its merits and the collective bargaining agreement shall constitute the basis upon which the decision shall be rendered. The decision at Steps I, II, and III shall not be used as a precedent for any subsequent case.

> The arbitrator shall neither add to, subtract from, nor modify the provisions of this Agreement. The arbitrator shall confine himself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted to him.
>
> The decision of the arbitrator shall be final and binding on both parties, except where the decision would require an enactment of legislation, in which case it shall be binding only if such legislation is enacted. The arbitrator shall be requested to issue his decision within 30 days after the hearing or receipt of the transcript of the hearing.
>
> All of the time limits contained in this Section may be extended by mutual agreement. The granting of any extension at any step shall not be deemed to establish precedence.
>
> All fees and expenses of the arbitrator shall be divided equally between the parties. Each party shall bear the costs of preparing and presenting its own case. Either party desiring a record of the proceedings shall pay for the record and make a copy available without charge to the arbitrator.
>
> An employee shall be permitted to have a representative of the Union present at each step of the grievance procedure up to and including Step IV. . . .

The results of arbitration are binding and final on the parties unless otherwise stipulated.

The ultimate problem in steps 4 and 5, where arbitration is involved at step 5, is that major issues of correctional operational policy or major expenditures could be at risk in the hands of an arbitrator. The fact that the arbitrator is neutral may be disquieting since it may be felt that only a person with correctional administrative experience could appreciate the full consequences of a finding against the state corrections department. Also, an arbitrator's finding could involve an award of several million dollars which could be paid only by new appropriations. Management may feel that there are some issues too "hot" to arbitrate--

as discovered by letting a grievance go to arbitration which might have been negotiated to an acceptable conclusion at an earlier stage.

Management should have the foresight to anticipate grievances which, as a matter of rights conferred by contract and the written grievance procedure, may not go to binding arbitration. These could have been defined in enabling legislation by restrictions relating to the scope of bargaining. This would add specificity to management's rights. Such restrictions are found in both legislation and in negotiated agreements. They refer to matters which (1) are not subject to the grievance procedure; or (2) if grievable, are appealable only to step 3; or (3) if grievable, are appealable only to advisory fact-finding or mediation services.

Examples of such issues have been previously identified; therefore, only a few need to be mentioned here:

- Matters involving prisoners' rights and existing programs and schedules;
- Matters involving position classification and internal pay evaluations of classes in series or closely related classes;
- Matters involving civil service discretion in recruitment, examination, certifications and selections, and civil service tenure (not involving disciplinary action);
- Matters involving the deployment of personnel, such as the number of positions necessary to perform prisoner supervision functions.

While it would be relatively unusual for any of these matters to arise directly in provisions of the management-union agreement (to which a grievance must be related), there are many issues which indirectly involve such broader issues. The most common example is found in grievances regarding safe working conditions where it is held that the work is unsafe unless certain changes are made. The changes then could involve any or all of the previously listed problem areas.

In some situations, after initial consideration of a grievance which is determined to be beyond the scope of the union contract, management may conclude with union consent that it will be processed through the grievance procedure to: (1) advisory fact-finding; (2) an advisory arbitration panel; or (3) an arbitration panel whose findings involving any increase in appropriations to the department will be submitted to the legislature and shall not be effective without their enactments or appropriations.

Panels of Arbitration

A typical provision for panels is found in the Pennsylvania enabling legislation:

> (1) Each party shall select one member of the panel, the two so selected shall choose the third member.
> (2) If the members so selected are unable to agree upon the third member within ten days from the date of their selection, the board shall submit the names of seven persons, each party shall alternately strike one name until one shall remain. The public employer shall strike the first name. The person so remaining shall be the third member and chairman.
>
> Whenever a panel of arbitrators is hereafter constituted pursuant to the provisions of . . . the "Public Employee Relations Act," the cost of the arbitrator selected by each party shall be paid by the respective party selecting the arbitrator. . . .

Fact-finding

The most common alternative to binding arbitration is fact-finding which may be accomplished through employment of one or a panel of three fact-finders, as in an arbitration panel. Fact-finders are drawn by a procedure of management-union strike-out of names from a list of qualified persons. In some cases, reputable firms also may be listed.

The advantage of fact-finding is that, while not binding on either party, the findings and recommendations will strengthen one side of an impasse and weaken the other in future negotiations. The results also can be of use in supporting the negotiations' conclusions where legislation is required to implement the agreement.

Step 4

The above procedures all develop out of considerations at step 4--the state office of employee relations. Such sensitive cases as discussed above fortunately are not representative of most cases which are appealed to this level.

Generally, all step 3 grievance appeals not approved will be appealed to step 4; similarly, all step 4 appeals denied will be requested for step 5. Each of the staff members of the state employee relations office usually will have an assignment of two or more bargaining units. Their reviews are not unlike those of the department head's office at step 3, except they will have less detailed knowledge of the correctional field and related professional commitments to the particular mission of the agency. A good working relationship between the state employee relations office and the departmental employee relations office is desirable and natural, considering the volume of appeals which will be handled in a year--1,000 more or less in a medium-sized state such as Wisconsin.

On the other hand, the staff of the state employee relations office seldom see their function as rubber-stamping departmental decisions. They tend to rule against the department in up to 25 percent of the cases. This is not so difficult, however, as long as there is some informal communication between that office and the department regarding which cases, if approved, could cause management problems.

Departmental Appeals to Step 4 Decisions

There appear to be no procedures in effect which provide for an appeal by the director of the operating department to the governor on unacceptable decisions of the state employee relations director. While it may be desirable to add a provision to permit such appeals, there are risks involved since this also could facilitate appeals by the unions to the governor. Unions, of course, already achieve this by "end runs" around both the department head and the state director of employee relations. However, this is rare since end-running grievance appeals tends to waste the union's political powers on issues which are less important than major new contract provisions, including salary increases.

Since a majority of step 4 appeals are rejected, the unions will request step 5 resolutions which usually involve binding arbitration. This tends to create a large backlog of cases awaiting assignment to arbitrators. It is generally to the union's advantage to clog the arbitration system so that some pressure is placed on the operating department to reopen or bargain for a compromise solution. The alternative in this case would be to have a basic procedure or activity frozen in place, for all practical purposes, awaiting disposition of the outstanding grievance.

Management is fully aware that the unions will not let all cases go to arbitration. They know which cases they are likely to lose and prefer to avoid the union's share of the arbitrator's fees and expenses. Since some of these cases will be moot by the time they come up (because of separation or retirement of the employee, for example), by waiting for arbitration assignment the union can reduce the number of cases in which it withdraws the grievance, thus disappointing as few members as possible.

IMPACT

The grievance procedure comprises the principal activity of the department of corrections in employee relations. Steps 4 and 5 can be affected very little by correctional administrators, except by having a skilled employee relations advisor on the commissioner's staff.

These steps should not be taken lightly. Administrative burdens and arbitration costs can be great, even without considering the costs of unfavorable rulings at steps 4 and 5. The best course of administrative action is to develop organization skills in effective employee relations, and to maintain a flexible position toward the issues and people concerned with employee representation.

The effectiveness of employee relations is measured neither by the executive's popularity with the unions and members nor by the number of successes and failures at the top steps of the appeal route. A totally inappropriate grievance issue could be presented in different forms, from different employees, and from different institutions--and be rejected repeatedly as they should be--yet the tenth or twentieth submission could get through and become a celebrated, embarrassing, and unfortunate arbitrator's award which the department will have to live with for years to come.

Related Issues

- 1.02 - Collective Bargaining Negotiations
- 1.06 - Contract Administration
- 1.12 - Organization for Employee Relations
- 1.13 - Management Rights
- 2.01 - Grievance Procedures, Steps 1-3

2.03 OVERTIME AND SICK LEAVE

Issue: What can be done about the enormous increase in overtime costs and use of sick leave after completion of collective bargaining agreements?

PRINCIPLES FOR ADMINISTRATIVE ACTION

The problem of excessive use of sick leave and overtime is almost universal in correctional departments under collective bargaining. Success in this very difficult area requires that both detailed and summary statistics be collected on sick leave and overtime hours. Such analyses should cover at least the past several years, or long enough to pick up the year preceding conclusion of the first negotiated agreement. Totals should be displayed by bargaining unit and by institution, as well as for nonunion employees.

In most cases, the administrative research designed to gain full perspective on the problem may require a special reporting system to classify leaves and overtime in terms of the various reasons for their use and to analyze current methods for authorizing and approving such leaves and overtime charges.

The experience of many states indicates that causal factors other than new union contract provisions are involved. Overtime and sick leave are treated together here because of the constant correlation in the rise and fall of these two indicators. In most cases, new contracts have made little change in existing sick leave provisions, but have produced generous changes in both the compensation rate of overtime and in the basis for earning it. Thus, contract provisions cannot account for the rise in use of sick leave, and account for only some of the rise in overtime.

The most common causal factor has been managerial and supervisory laxity or misunderstanding of policy. This is evident from use analyses which reveal nominal increases in some institutions and enormous increases in others. A secondary cause often is a poorly developed or implemented post assignment plan and post orders.

Other underlying causes are:

1. Retirement provisions where the rate is determined by the amount of gross pay (overtime included) for the last several years worked. Older officers nearing retirement eligibility frequently transfer to institutions and posts in which there is maximum opportunity to earn overtime.

2. Other overtime incentives involve situations where overtime is authorized after so many minutes of work past the shift change. Since shift changes typically occur after the prisoner count clears, the smallest error in count reporting will delay leaving the shift. Two or three recounts can result in an hour of overtime for the entire shift.

3. Overtime incentive is found in systematic laxity in performing basic security searches of prisoners and their housing and work areas. As a result of officer complaints about excessive contraband and weapons in the prison, special search squads must be formed periodically on an overtime basis.

4. A major reason for overtime is the need for coverage of unfunded new programs. Such programs have included extended family visiting, work furlough, and community group participation in counseling, arts and crafts, and education programs.

5. Sick leave availability is an incentive for employees to accept more overtime than they can handle. Sick leave is abused when it is used not for personal illness, but to provide additional days off so that overtime can be worked at premium pay rates. One method of curtailing this abuse would be to revise the contract provisions so that a sick leave day could not be counted as a day worked in computing the necessary days or hours required before reaching the overtime rate.

At one time, correctional administrators dealt with such problems directly. Under collective bargaining, the unions must be consulted on any remedial action. Their counter-suggestions must be considered, and the problem may also merit consultation with the state director of employee relations to identify possible problems and responses in other departments.

Because the amount of supplemental earnings can be considerable over a sustained period, corrective action may be bitterly resisted by employees. Management frustration can be avoided only by extensive consultation before acting, supervisory training, and persistence and patience in staying on top of the causes of the problem.

Background of the Problem

In recent years, compensation policy has dramatically changed overtime pay. Some states (e.g., Indiana) still observe the "no overtime" rule. If overtime is worked for any reason, it is taken off later on a "compensating time" basis. However, in states with union contracts, the trend is toward premium pay of time and a half for work over 40 hours and on the sixth day of a workweek. In some cases, as in Pennsylvania, double time is paid for the seventh consecutive workday. Other variations provide time and a half for work on a holiday plus time off at a later date, compensation for "standby time" at home when alerted that an employee may be needed for emergency or relief work, and compensation at the level of any higher classification when the employee is temporarily assigned to such work for more than ten days.

A November 1975 memorandum of the New York State Department of Correctional Services indicated that the most prominent administrative problem contributing to excessive overtime expenditures at one of the department's facilities was the abuse of sick leave as well as workmen's compensation leave. This abuse robbed the day-to-day pool of available security staff. On the average, overtime payments at this facility added $3,888 annually to the salary of each correctional officer. This amounted to a 30 percent increase in pay over the average annual salary of $12,850.

The premium pay for overtime has been a windfall for some employees. The original principle for overtime pay was to discourage "sweatshop" operators from working employees overtime (with pay) without additional fringe benefits and related overhead costs, thereby avoiding the hiring of additional employees with additional overhead costs. The overtime penalty was meant to discourage overtime and encourage more employment. In public administration, however, the agency can employ more persons than are budgeted by the use of overtime. In most state government departments, extensive use of overtime in this way would soon be dealt with by the central finance agency, if not by the legislature. In prison administration, however, a legitimate need for overtime to deal with escapes and emergencies has long existed. For years, many states have had an expenditure category for overtime to handle escapes and emergencies based on prior years' experience. Once administrative controls are relaxed and the premium pay rate is added as an incentive to staff, the amount of overtime has tended to increase at an astounding rate.

Where it has been a long-standing practice to expect all correctional officers on ground posts to search prisoners, shops, and work and housing areas for contraband (weapons, drugs, money, etc.), it is now more common under union contracts for correctional officers to have no time to perform this function during the regular work shift. Instead, it is insisted that because there is so much contraband in the prison, it must be seized by special, periodic area searches--sometimes covering the entire institution--by special squads on an overtime basis.

It should be added that this is not always an abuse of employee pressure or management authority, since under conditions of prison overcrowding many regular job tasks are not done or are not done well. Usually these conditions are not dealt with affirmatively by authorizing temporary staff increases; thus, the situation can get out of control, providing clear justification for assessing a continuing security problem as an emergency warranting increased overtime. This may also be extended to authorized posts often left uncovered in previous times of temporary staff shortages.

Nevertheless, a large proportion of overtime in 1975-76 probably was unnecessary. Its use also causes a sharp increase in the amount of sick leave. Annual sick leave use in one prison system in 1965 was about six to seven days per year for male employees and slightly higher for female employees. In 1975-76, average sick leave use jumped to ten to twelve days for both men and women--about the same rate as it is earned. In an institution with 500 employees, this should increase the budget by at least the equivalent of 25 annual salaries. A simple frequency distribution curve of sick leave use and overtime will go up and down--but mostly up--together.

Non-economic Compensations

In 1975, several eastern states facing a general policy of no employee salary increases for the new fiscal year negotiated some "non-economic" improvements for corrections. These improvements actually were camouflaged economic benefits. They included an overtime allowance for shift overlap for correctional officers and sergeants. The "overlap" arises from the fact that 24 hours is divided into three 8-hour shifts, and correctional officers cannot leave their posts until relieved by the next shift. In addition, the prison is not only large, but there are also numerous security points to slow an employee while coming in or going out.*

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*This makes it very difficult to have a significant rollcall lineup for the new shift, although it is done occasionally for important announcements and critical information concerning institutional security problems.

A simple code of honor, "The Golden Rule," apparently works to keep the relieving officer from being late to his post; otherwise, the pattern will continue and the officer to arrive late will, in turn, be relieved late. It is typical for an officer relieved at 4:00 P.M. to be at his car for the trip home at 4:20 P.M. Recognizing 15 minutes of this time as overtime yields 22½ minutes extra of straight time daily, or 82.5 hours per year in a 220-day work year. If the average correctional officer earns $13,000 in base pay, he will receive an approximate increase of $600 a year or approximately one salary range step from the overlap provision.

Commissioners and superintendents often are appalled at such a development. In no case where an overlap provision has been negotiated was the commissioner consulted. Once accomplished, the line of new negotiations is set and the time considered as overlap tends to be extended. It is sound and standard practice that no shift is relieved until it completes the prisoner count--which usually starts about 30 minutes prior to shift change. Without incentive and with a penalty of staying over without pay until the count clears, a delay in count clearing of a few times per week is considered normal. With the negative incentive, however, counts can be expected to become much more difficult to clear without overtime.

Additionally, many other employees also have unique working conditions. Farm supervisors, hog ranch operators, and culinary supervisors must be at work by 5:30 A.M. or earlier. The culinary crew will have some relief by noon to supervise the supper meal, but most culinary and farm crew employees will be able to leave by 3:00 P.M. These are merely examples of what most job classification and salary-setting officials, as well as the employees themselves, believed were accepted characteristics of the work.

IMPACT

The immediate impact of leave and overtime abuse is the curtailment of discretionary (lower priority) programs in order to finance these new costs of operation. Failing to reallocate funds for this purpose for whatever reason will require supplemental funds--either those available to the state director of finance or funds allocated by the legislature by supplemental appropriation during the year or deficiency funding at the end of the fiscal year.

In addition to the adverse impact on other desirable prison programs, such abuses of overtime and leave nurture discontent among employees without similar benefits, whose work also may be made more difficult because of abuses of overtime and leave. For example, as steps are taken to speed up the clearance of slow counts, it is common to move up the time at which prisoners are moved to the cell blocks and other count locations. This can reduce the workday in industries and maintenance departments, shorten the teaching or training period in the classrooms and vocational shops, etc.

Such developments usually affect the prisoners; their movement is curtailed, length of family visits reduced, less recreation time is provided, and special athletic programs are cancelled for lack of funds to pay for custodial supervision.

__Related Issues__

1.09 - Civil Service Interrelationships

1.11 - Manpower Management in Prison Administration

2.04 JOB SECURITY

Issue: How do unions deal with the protection and preservation of jobs for employees? What problems are associated with this?

PRINCIPLES FOR ADMINISTRATIVE ACTION

While state-union contracts rarely contain provisions relating to the performance of jobs, as opposed to an employee's rights to the job or a similar job, all unions place high priority on the protection of jobs which their members hold.

One aspect of this is simply a matter of "union security" (covered in Issue 3.01) or protection of its membership and related income to the union.

Under management rights, the authority is reserved for the state to create and abolish positions and to organize and reorganize the work. If, however, management wants to reorganize the work so that groups of employees will fall into another bargaining group represented by a different union, meet-and-confer procedures will need to occur. All possible grievances will be submitted to resist an undesirable change, and all possible political pressure will be exerted to abandon or modify the plan. If the plan goes forward, precise arrangements must be made for retraining, new position appointment, and seniority rights, without loss of compensation.

Similarly, management has no absolute right to rearrange the organizational work plan so that discrete functions may be contracted out to private organizations (such as the medical clinic, food service, or a prison industry). All procedural steps must be exhausted, including legal challenges (if any can be made) and challenges to efficiency of the new arrangements for services.

A typical provision is found in the Wisconsin-AFSCME contract:

> When a decision is made by the Employer to contract or subcontract work normally performed by Employees of the bargaining unit, the State agrees to a notification and discussion with the local Union not less than thirty (30) days in advance of the implementation.

Public sector unions often attempt to negotiate more restrictive provisions on contracting out state work, but none are known which provide an absolute prohibition.

Union ire was aroused in the early 1970s when many states, most notably Massachusetts, began shifting substantial portions of prison populations from institutions to community-based programs. Such programs, halfway houses and group homes in particular, usually can be operated by private groups with economic as well as social advantages. The jobs involved in operating such programs are seldom of the same classification requirements as those being replaced in the prisons or youth training schools. Even if comparable, they would require employees to relocate and work in an urban neighborhood environment.

Similar correctional reforms have involved the concept of revitalizing prison work programs by contracting them out to private firms. Contracting for the operation of laundries, auto shops, and food service is common in public and private hospitals, universities, and colleges. In opposing similar arrangements in prisons, the unions have had their most obvious successes through political action; for example, (1) throwing suspicion on alleged economies and "sweetheart" arrangements with private enterprises; (2) challenging the "excessive risks" to the public involved in alternative or early release programs; and (3) challenging the competency of the departmental director for the previous reasons. The acrimony of management-union discourse does little credit to either side when profound issues of public policy and public safety are in the balance. To some extent, union responses to contracting out have discouraged attempts to institute such reforms elsewhere.

IMPACT

The principal impact of union concern over its members' job security usually is overlaid on various civil service protections (e.g., salary retention if the position is reclassified to a lower class, reinstatement rights in the event of layoff for any reason). Thus, the union can act most vigorously where civil service is quiescent (e.g., layoffs due to reorganization or reduction of the work force).

The union represents a political force for expansion of the existing work force and union membership. In pressing for additional correctional officer coverage of certain prison areas, success may result by substituting a union priority item for an item which management feels is more important when a choice of new expenditure is restricted by the amount of funds available. In negotiating sessions, management may have to accept the premise that fifteen new correctional officer posts for particular assignments would be desirable if they could be provided.

At the same time, however, management may have submitted in its budget request funds for three new vocational classrooms, equipment, and instructors, with no additional correctional officer posts indicated. If approved and submitted to the legislature, there will be two substantial new expenditure items before them. In arguing for the new correctional officer coverage, the union can cite the department's concurrence, while indicating grave reservations about the need for the new shops, or their location, or the specific kinds of shops if, for example, they present new security problems because of the materials and tools available. This may occur even if the union raised no objections during previous meet-and-confer sessions.

Where this occurs, prison administrators may interpret the final appropriation of fifteen new correctional officers, and the denial of the new vocational shops, as a betrayal by the union. Even if the union had agreed not to oppose the shops, what it could not say in public hearings its representatives could say in private. Such situations can be handled more successfully if management is more skillful in its techniques in the future.

In summary, the unions, through negotiations and political efforts to obtain contract approval, can help correctional administrators to meet the problems of prison overpopulation and the need for new resources. However, the unions cannot be expected to assist in the diminishment of their own powers.

Related Issues

1.09 - Civil Service Interrelationships

1.13 - Management Rights

3.01 - Union Security

2.05 SENIORITY PROVISIONS FOR JOB ASSIGNMENT

Issue: How far should management go in negotiating on seniority provisions? What are the consequences of various levels of use of assignment selection by seniority?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Management must expect to negotiate on seniority provisions since a substantial majority of positions in corrections are so covered and it is a prevailing practice under union contracts. It is also a prevailing practice for many, if not most, assignments of correctional officers, even where there is no collective bargaining.*

"Assignments" consist of determining the correctional post and shift on which the individual officer or sergeant will work. Most unorganized departments or prisons have followed the practice of periodic shift rotation in which all employees work posts on all shifts. The frequency of rotation varies widely from one state to another. In some, rotation occurs once a month; in others, once every six months. Quarterly rotation is considered "average."

There are many states, particularly those with collective bargaining, in which shift assignment is permanent, although shift changes can be bid on by seniority at various intervals (at least annually). The results of this practice vary greatly, since institutional characteristics, location, and age of staff are all involved in shift selection decisions. In high-security prisons, the desirable posts tend to be those without inmate contact; thus, the first watch (midnight to 8:00 A.M.) is most popular. In other more favorable situations, most third-watch employees tend to be the new employees. Tower posts and a few other minimum-contact posts on the ground are often selected by senior officers on all shifts.

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*Since the predominant problem is in the area of correctional officer and correctional sergeant assignments, discussion of this subject refers exclusively to these classes.

The racial composition of prisoners and staff also has an impact on shift and post selection, particularly in institutions of medium or greater security, located in rural areas, and with substantial overcrowding. In these situations, the work force is predominantly white and the prisoners are predominantly nonwhite. The majority of white officers with seniority will avoid most second- and third-watch assignments where there is a maximum amount of prisoner movement and activity. Minority officers may prefer day shifts and find inmate contact work somewhat less onerous considering the alternatives, since these officers usually have less seniority.

Management Implications

Prison managers are seldom disadvantaged under any deployment plan except where they are denied full right of selection of officers for the most sensitive or difficult posts. Generally, managers want the right of selection without regard to seniority for the following types of correctional posts:

1. All housing area posts, especially the second and third shifts (8:00 A.M. to 4:00 P.M. and 4:00 P.M. to midnight);

2. Corridor and sally ports;

3. Dining room and activity areas such as classroom areas, vocational shops, laundry, recreation yard, and the visiting room (these are mostly day shift posts);

4. Posts requiring administrative ability and judgment such as control room, receiving and release, and canteen (particularly second and third shifts).

Contract Provisions

The Pennsylvania-AFSCME contract contains an unusual provision on seniority:

> Seniority unit for the purposes of this unit is limited to those employes within each institution who are in the same classification series.

This provision has the effect of restricting transfers and promotions between institutions since the employee carries over no seniority into another institution.

The Pennsylvania-AFSCME contract goes on to provide the following statement on job assignments:

> The Employer agrees to post any vacancy in a permanent job assignment (i.e. not involving promotion) 15 days prior to the filling of such vacancy unless an emergency requires a lesser period of time. Employes at an institution who are in the eligible job classification will be given an opportunity to bid on such a vacancy and preference shall be granted on a seniority basis unless it is necessary or desirable to assign otherwise in order to protect the efficiency of operations. Whenever the vacancy is filled by a person other than the most senior eligible employe bidding on the job, the institution superintendent or his representative will explain to the most senior eligible employe the

> reasons for selecting a less senior person. A grievance under this section may be pursued only through Step IV and the decision of the Secretary of Administration shall be final and binding.

In this provision, the third sentence appears to allow management the discretion to make some assignments in exception to the seniority rule. This is used infrequently in some institutions and not at all in others. One small, minimum-security institution, by agreement of the union local, has totally ignored the seniority requirements in favor of the more informal system previously in use there. Such exceptions are permitted but not recognized by the union or the state.

Despite management expectations regarding discretion to bypass the seniority rule in post assignments, in actual practice it has been difficult when almost every exception made in post assignment results in a grievance by an employee. To some degree, management has brought this about by making few attempts to avoid the seniority rule during the initial months of the first contract.

The seniority provision of Wisconsin's contract with AFSCME includes some different approaches:

> Seniority for Employees hired after the effective date of this Agreement shall be determined by the original date of employment with the State of Wisconsin. Seniority for existing bargaining unit Employees shall be their seniority date as of the effective date of the Agreement. Seniority for Employees who become members of the bargaining unit during the term of this Agreement shall be their adjusted continuous service date as of the time they became members of the unit. When the Employer becomes responsible for a function previously administered by another governmental agency, a quasi-public, or a private enterprise,

> the seniority of Employees who become bargaining unit members as a result of this change of responsibility shall be their date of accretion into State service unless the legislation or the Executive Order causing such accretion specifies differently. Such seniority will be changed only where the Employee is separated from State service by discharge, resignation or layoff.
>
> The Employer shall notify the Union as soon as the Employer becomes aware of formal consideration being given to State assumption of functions currently administered by another governmental agency, a quasi-public or private enterprise by Executive Order, or aware of any legislative hearings scheduled to discuss such State assumptions of functions.
>
> Where separation has occurred and the Employee is subsequently rehired, the date of rehire will begin the seniority date except where an Employee is laid off and recalled or reinstated from layoff within five years thereof, he shall retain his original date of employment for the computation of seniority.
>
> In the event two Employees have the same seniority date, seniority of the one as against the other shall be determined by age with the oldest Employee considered having the greatest seniority.
>
> The Employer shall provide a semi-annual seniority list . . . for Employees in units covered by this Agreement. Such list shall contain each Employee's name, classification and seniority date. Employees shall have thirty (30) calendar days from the date this list is provided to the Union to correct errors except that in cases of layoff the time available for correction of errors shall be the life of that list.

The main difference is that the Wisconsin-AFSCME contract provides for determination of seniority based on total continuous state service. Seniority for post assignments also appears to be entirely discretionary. In most institutions, however, these negotiations have resulted in almost total seniority determination for post assignments, as in Pennsylvania.

Where discretion is needed to make appropriate assignments to sensitive or difficult posts, one solution would be to name the posts, types of posts, or percentage of posts to be excluded from seniority bidding.

IMPACT

Seniority provisions for post and shift assignments can present problems for the prison superintendent when the procedure results in a mass flight of senior officers from inmate contact posts to non-inmate-contact posts, as has occurred in several states.

New problems and solutions have been identified where this flight occurs to a significant degree. A position classification is based on an analysis of all typical duties of positions in the class group. The level of a position is ultimately determined by the highest responsibility and most difficult task regularly performed, although the time spent in such an activity may constitute a relatively small portion of the employee's total time on the job. Since the correctional officer class includes both less and more difficult assignments, where direct prisoner supervision and interaction is involved and it is understood that newer officers will be assigned the less difficult tasks, the pay plan of salary steps provides for recognition of employee growth and assumption of more difficult tasks. Correctional officers thus move to pay steps 2, 3, 4, and 5 on the basis of expanded responsibilities and increased benefit to the employer.

Where the most difficult work is performed by less experienced officers, the entire concept of the class should be considered for restructure. The solution most commonly used is to create a correctional officer I and II series, with class II about two salary steps higher than class I. In this way, incentive is restored for senior officers to take the more difficult assignments involving prisoner contact and the more active shifts where such positions are found.

Related Issues

1.09 - Civil Service Interrelationships

1.11 - Manpower Management in Prison Administration

3.07 - Position Classification and Pay Plan

2.06 SENIORITY PROVISIONS FOR PROMOTIONS AND TRANSFERS

Issue: What are management's concerns regarding seniority provisions as they apply to promotions and transfers?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Applications of seniority to promotions and transfers can severely restrict management efforts to promote employee development for advancement and supervisory development for future managerial assignment. They can be restrictive, as in Pennsylvania and Massachusetts, where seniority is calculated only on the service in the institution of current assignment.

This would not be enough to restrict promotions, particularly if time in grade were the basis for seniority computation, since a newly promoted person would be the lowest in the class regardless of the institution to which he is assigned. It becomes restrictive when the promotional examination provides (as in Pennsylvania) that the civil service certification of eligibles for each institution (on a service-wide or department-wide examination) shall give special consideration to employees of that institution. Thus, it is almost impossible to promote to another institution. The language of the Pennsylvania-AFSCME contract elaborates this point:

> For civil service employes the Employer, for promotions and filling of vacancies, shall recommend the following:
>
> a. In case of promotions and filling of vacancies without examinations within a seniority unit where it is determined that skill and ability are relatively equal, the employe with the greater seniority shall prevail. . . .

> b. In case of promotions and filling of vacancies by examination within a seniority unit the senior most employe who is within 5 points of the highest ranking seniority unit employe shall be promoted unless a person outside the seniority unit receives a grade placing him at least 10 points higher than the highest ranking seniority unit employe in which instance the person from outside the seniority unit may be appointed. . . .

Where such a provision applies to the promotion of correctional officers to sergeants, management should expect no inter-institutional transfers or promotions up through the sergeant rank. Since the agreement does not apply to classes not in the bargaining unit, lieutenants and higher classes may be transferred and promoted without restriction, other than those imposed by normal civil service procedures.

In many cases, transfers and promotions to other institutions also are frustrated by a lack of funds or highly restricted allowances for reimbursement of relocation expenses. States which have no funds for relocation expenses, such as Massachusetts, have virtually no movement at any grade level.

Planned experience for employee development need not confer "crown prince" status on the employee; neither should it, however, penalize the employee who seeks self-improvement by such means. The Wisconsin-AFSCME agreement on transfers is typical in its provisions:

> Section 1
>
> Transfers within employing units: When a permanent vacancy occurs in a permanent position in an employing unit or when the Employer becomes aware of an impending permanent position in an

employing unit, unless mutually agreed to otherwise, the Employer shall notify the local Union indicating the classification, any special requirements (including training and experience), the shift, shift rotation (if any), work schedule and the work location, and the local Union shall notify the Employees of the bargaining unit in the employing unit. Interested permanent Employees assigned to the same or other shifts in the employing unit who are in the same classification and who have completed their probationary period in the classification of the vacancy shall indicate their desire for a transfer by notifying the Employer within five (5) calendar days of notice to the Employee or within seven (7) calendar days notice to the Union whichever is greater. During the period while the selection process is being administered or for a maximum of six (6) months, whichever is less, the Employer may temporarily fill the vacancy to fulfill operational requirements. The Employee selected to fill the permanent vacancy shall be the Employee with the most seniority, unless he/she is not physically or emotionally fit for the job or cannot perform the work in a satisfactory manner.

Section 2

When a permanent vacancy occurs or the Employer becomes aware of an impending permanent vacancy, the Employer will review those requests from any Employees in the same employing unit who are in the same classification as the vacancy and have indicated an interest in the vacancy.

Any Employee who is selected for transfer shall have three (3) work days in which to decline the offer.

In the event the most senior Employee is not selected to fill the vacancy, the Employer shall notify the Employee in writing of the reason(s) if the Employee or the Union so requests.

Whenever a vacancy is created involving a new position and the duties are substantially different or involve a different geographic location, the Employer will announce the vacancy in the employing unit in which the vacancy exists. The announcement shall be in the same manner as the announcement for promotional exams as provided [below]. . . .

Section 3

In the event that the vacancy is not filled by transfer of an Employee under provisions of Section 1 of this Article the Employer shall consider interested qualified Employees from other employing units of the department following the seniority requirements of

Section 1 of this Article. In the event the vacancy is not filled by transfer, the Employer may fill the vacancy in accordance with the Wisconsin Statutes.

Section 4

For purposes of this Article, a permanent vacancy is created:

1) When the Employer has approval to increase the work force and decides to fill the new positions;

2) When any of the following personnel transactions take place and the Employer decides to replace the previous incumbent: terminations, transfers out of the bargaining unit, promotion or demotion;

3) If no Employee has indicated a desire to transfer to a vacancy and the Employer fills such vacancy by transfer of an Employee from another classification in the same salary range and determines that the vacated position is to be filled, such position shall be subject to the provisions of Section 1 of this Article;

4) Transfers within the bargaining unit resulting from either (1), (2) or (3) above.

Section 5

1) The applications of the procedures in this Article shall be limited to a maximum of three (3) transfers resulting from any given original vacancy.

2) Employees may not transfer under the provisions of Section 1 of this Article more often than once every six (6) months.

3) Employees transferring under the provisions of this Article shall not be eligible for payment of moving expenses by the Employer.

4) In cases of involuntary transfers, the Employer will reimburse Employees in accordance with Wisconsin State Statute 20.916.

Because employee requests for transfer to a vacancy in other locations will result in a forfeiture of reimbursement for moving expenses, employees are unlikely to use this procedure. In the absence of requests for transfer, management has considerable discretion to offer transfers to those whom it wishes to occupy vacated positions and to reimburse their moving expenses.

IMPACT

The geographical dispersion of correctional institutions is sufficient to discourage many employees from seeking the broad and varied experience to be obtained by working in several institutions. Some union agreements further discourage such movement by attempting, through the civil service commission, to have promotional examinations limited to competition within each institution; to build a point value for years of service into the examination score; to have union observers present during the oral examination phase (to assure relevant questions); to resist the abolishment of lists of eligibles in order to establish new ones; and to reduce the weight of the oral and performance evaluation portions of the final examination score in order to put more emphasis on the written segment. In so doing, the unions represent the preferences of their members, and have been effective in relieving employees' suspicions about the civil service system.

Because the unions also represent employee interests in reducing the length of probationary period for new employees, weakening the basis for termination of unsatisfactory employees during the probationary period, eliminating probationary periods for promotions, and further restricting the basis upon which employees can be demoted or discharged, unions contribute heavily to the general deterioration in the quality and motivation of the public service worker.

Another factor contributing to rising governmental costs and lowered productivity is the failure of management to assert its influence and adapt its methods to the collective bargaining process without relinquishing the policies, issues, and tools it needs. In collective bargaining states, very few competent administrators are willing to assert their rights because of their fear of the retaliation which often is turned against those who are marked as "anti-union." Usually it is an unfair charge, except that a manager's job necessarily pits him against some of the interests of employees and their unions. Even the most competent manager, highly specialized in his occupational area, in his middle years or older, also needs his job. Finding comparable work elsewhere is very difficult outside of government, especially at his age, and especially if it is reported that he had to leave because he could not get along with employee unions. The situation can be intimidating.

As indicated previously, the appropriate political and management response to "steam roller" union tactics is to organize executives. In this way, policy issues in one department which affect all government departments result in a situation where one or two individuals need not stand alone, but are joined and supported by their peers in achieving some equalization of powers.

Management Representation in California

Recently there has been established in California an organization named California Association of Management (CAM). CAM's functions are stated to be:

1. To provide an independent, nonpartisan voice to express views of the managers and supervisors who run California state government.
2. To facilitate communication between government agencies and management employees on issues of importance to the California State Government management team.
3. To represent State managers and supervisors as a group wherever decisions are made that affect their role in State government.
4. To provide benefits specifically tailored to the needs of State managers.

The Executive Director, Arthur H. Setnik, stated:

> "If collective bargaining comes to state government, it will be even more essential for management to have their own organization and voice."

CAM currently claims over 300 members of a potential membership of about 18,000. Setnik also stated that this group:

> . . .is not management itself. We represent managers. And we will be representing those people who would be excluded from any kind of bargaining agreement. Traditionally, all across the country as moves toward collective bargaining progressed, it is true that a great many management prerogatives are lost in the process.

It does, however, stress the earlier point that managers are a precious governmental resource whose needs have been more or less neglected in the states and in the public safety related agencies in particular. The organization's bylaws prohibit CAM from making campaign contributions to political candidates, nor may it sponsor, endorse, support or oppose such candidates.

Reference

1. Sacramento Bee, 25 November 1976.

Related issues

1.00 - Enabling Legislation

1.09 - Civil Service Interrelationships

2.07 EMPLOYEE ORIENTATION AND IN-SERVICE TRAINING

Issue: Should the union have any role in new employee orientation and in-service training?

PRINCIPLES FOR ADMINISTRATIVE ACTION

A provision from the Wisconsin-AFSCME agreement is as follows:

> Upon mutual agreement between local Management and the appropriate local Union, a representative of the local Union may be granted up to fifteen (15) minutes for Union orientation during scheduled group orientation meetings involving five or more new bargaining unit members. The Employer retains the right to prohibit or terminate any Union orientation presentation that contains political campaign information or material detrimental to the Employer. Attendance at Union orientation presentations shall be voluntary.
>
> In the absence of such an agreement, the Employee agrees to distribute to new bargaining unit employees a packet of informational material furnished to the Employer by the local Union. The Employer retains the right to review the materials and refuse to distribute any political campaign literature or material detrimental to the Employer.

There have been no reports of difficulties in allowing union orientation of new employees. Since most new employees will soon become union members, or at least be paying dues under agency shop provisions, the orientation session should provide for substantial coverage of grievance and appeal procedures under the contracts. This training also should present the general scope of bargaining and the organizational structure for negotiating and administering the contracts.

Bulletin Boards

A form of in-service training is the posting of notices and information on bulletin boards. Most union agreements cite specific references regarding the use of bulletin boards. The Wisconsin-AFSCME contract states:

> The Employer shall provide bulletin boards at locations mutually agreed upon for use by the local Unions to enable employees of the bargaining unit to see notices posted thereon. Such mutual agreement shall be arrived at locally. If no mutual agreement is reached at the local level, the matter shall be considered at a statewide committee meeting. Such committee shall consist of three (3) representatives of the WSEU as Council 24 may designate and three (3) representatives of the Employer as the Employer may designate. The employee representative(s) will serve without loss of pay. The normal size of new bulletin boards will be eight (8) square feet. The Employer will maintain bulletin boards provided under prior negotiated collective bargaining agreements and they need not conform to the normal size. Except in the Research Unit where the Employer shall provide bulletin boards per the above, in the event any new bulletin boards are mutually agreed upon, the Employer shall pay 50% and the Union shall pay 50% of the cost of such new boards. All notices shall be posted by the President of the local Union or the designee and shall relate to the matters listed below:
>
> A. Union recreational and/or social affairs;
>
> B. Union appointments;
>
> C. Union elections;
>
> D. Results;
>
> E. Union meetings;
>
> F. Rulings or policies of the International Union or other Labor Organization with which the Union is affiliated;
>
> G. Reports of Union standing committees; and
>
> H. Any other material authorized by the Employer or his designee and the President of the local Union or his/her designee.

Problems with union bulletin boards seldom arise except in cases of unauthorized posting or removal of notices. Such problems, which usually occur in large institutions, may be resolved by encasing the boards with keys available only to union officers.

IMPACT

Provisions enabling union orientation or training of employees have had little adverse impact on prison operations.

Administrators sometimes have created new problems for themselves by diverting public resources for private union business in such areas as:

1. Duplicating a printing service from prison trade shops operated by prisoners;
2. Providing free meals for visiting state or regional union officers and staff;
3. Allocating the profits from vending machines within the prison, particularly ones which are used by prisoners' families, to a "union welfare fund";
4. Not charging for space, furniture, equipment, and utilities for offices provided the union;
5. Lending the union state equipment, such as autos and audiovisual equipment, and supplies for union business or social activity.

2.08 LEAVES WITH PAY

Issue: What new policies and benefits in leaves with pay may be found in state-union contracts?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Existing leave practices usually are incorporated into the union agreement. This would typically include the following:

- Vacation
- Sick leave and bereavement leave
- Holidays
- Military leaves
- Civil leaves (citizen duties, jury and witness)

In addition, union agreements will tend to develop or enlarge some of these leaves (e.g., vacation) to provide more leave time based on seniority. Unions also may obtain for their members additional leaves called "personal leave days." The following provision from the Pennsylvania-AFSCME agreement is typical:

> All permanent full-time employes shall be eligible for two (2) personal leave days per calendar year, effective July 1, 1973.
>
> One personal leave day shall be earned the first half of each calendar year (January 1 to June 30) and one personal leave day shall be earned during the second half of each calendar year (July 1 to December 31).
>
> The employe must have 30 days service in pay status in each half calendar year to earn the personal leave entitlement. . . .

> Personal leave shall be scheduled and granted for periods of time requested by the employe subject to management's responsibility to maintain efficient operations. If the nature of the work makes it necessary to limit the number of employes on personal leave at the same time, the employe with the greatest seniority as it relates to total years of continuous service in state government shall be given his choice of personal leave in the event of any conflict in selection.
>
> Personal leave to which an employe may become entitled during the calendar year may be granted at the Employer's discretion before it is earned. An employe who is permitted to anticipate such leave and who subsequently terminates employment shall reimburse the Employer for those days of personal leave used but not earned.
>
> Personal leave days shall be noncumulative from calendar year to calendar year. If an employe is required to work on his scheduled personal leave day and is unable to reschedule his personal day during the calendar year due to the demands of his work, the calendar year shall be extended for 90 days for rescheduling purposes.
>
> An employe who becomes ill while on personal leave will not be charged personal leave for the period of illness provided he furnishes a satisfactory proof of such illness to the Employer upon his return to work.

In some states, negotiated leave benefits and improvements are not extended to nonunion employees. Most often this refers to supervisory, management, and confidential staff employees.

In Wisconsin where a special length-of-service benefit payment had been in effect for many years prior to state collective bargaining, the provision was included in the union contract. Subsequently, the legislature abolished the length-of-service statute and concurrently approved the union contracts. Thus, all nonunion employees actually had their compensation reduced.

Leaves for union business were briefly discussed in Issue 1.03, Contract Evaluation. Basic policy on this subject often is stated as follows (taken from the Wisconsin-AFSCME agreement):

> Bargaining unit employees, including Union officers and representatives, shall not conduct any Union activity or Union business on State time except as specifically authorized by the provisions of this Agreement.

Contract provisions generally provide for time off without pay (or chargeable to vacation at the employee's option). In the Wisconsin-AFSCME contract, another provision permits compensation for most of the time up to 22 days. These provisions for time off without pay are discussed in Issue 2.10 (Employee Time Off for Union Business).

Other leaves with pay include time for taking promotional civil service examinations and time to present grievances and appeals, including appeals before the civil service commission. Union agreements tend to add to this list certain activities relating to employee representation and negotiations.

IMPACT

For most positions, the impact of time off with pay in corrections is a cost for replacement of the employee. Most of this cost should be at straight time because additional employees have been hired to cover the various replacement requirements. However, when a new benefit is provided, whether it is another day negotiated for union members or a holiday declared by the governor in a special proclamation, hundreds of prison employees will go on overtime status. In some states, the cost is more than overtime because the contract provides that the employee who works a holiday often receives premium pay for the holiday worked plus an additional day off later in lieu of the holiday. Such new holidays actually will cost double time for the number of man-hours involved--the cost of overtime (50 percent pay) for the day worked plus the cost of replacement for another day at overtime rate (150 percent pay).

These uncontrollable and unbudgeted costs can play havoc with a tightly budgeted prison since in many cases these new costs have not been provided for and the superintendent is instructed to absorb them.

Related Issues

1.03 - Contract Evaluation

1.05 - Funding Contract Provisions

2.10 - Employee Time Off for Union Business

2.11 - Leaves Without Pay

2.09 HOLIDAYS

Issue: How are holidays affected by collective bargaining? How can management problems be avoided?

PRINCIPLES FOR ADMINISTRATIVE ACTION

In most state agencies, holidays simply result in a reduction of services to the public. For most prison employees, however, holidays are not days off since the work must continue and in fact often increases since holidays are observed by prisoners and their families through additional visiting.

Generally, state-union contracts provide for overtime for all holidays worked. In many states, another day off later--or the same as an additional day of vacation--is also provided. Assuming that correctional employees receive at least six days of holiday pay at premium rate and six days added to vacation (where two or three days fall on the employees' regular days off), it might be simpler if the holidays were bought back by an equivalent salary increase or combination of additional pay and vacation increase. The above assumptions produce the equivalent or 4.9 or 5 days of compensation at straight time for every 100 days worked or 20 percent of the total compensation annually. In most pay plans, this is nearly the amount of four salary step increases.

The Wisconsin-AFSCME contract contains the following provision:

1. The Employer agrees to provide the following 8-1/2 paid holidays per year:

   January 1
   Last Monday in May
   July 4
   First Monday in September
   Fourth Thursday in November
   December 24
   December 25
   December 31
   Afternoon on Good Friday - the Friday preceding Easter Sunday

2. The Employer agrees to provide two (2) additional non-cumulative personal holidays each calendar year to all employees who have achieved permanent status or who have completed the first six (6) months of an original probationary period in permanent, sessional or seasonal positions. These two (2) holidays may be taken at any time during the year provided the days selected by the employee have the prior approval of the appointing authority.

3. The Employer agrees that if January 1, July 4 or December 25 falls on a Sunday, the day following shall be observed as the holiday.

4. The Employer agrees that employees required to work on a holiday provided in 1 above shall be compensated for such holiday by receiving equivalent compensatory time off at a later date, and if a holiday provided in 1 above falls on an employee's regularly scheduled day off, equivalent compensatory time off shall be granted at a later date. When such compensatory time off is to be granted it shall be taken in accordance with the vacation scheduling provision. The appointing authority may permit such time to be anticipated. Such time shall lapse if not used in the same calendar year.

5. The holiday of December 25, 1976 shall be observed on Monday, December 27, 1976. The holiday of January 1, 1977 shall be observed on Monday, January 3, 1977. For overtime purposes for employees regularly scheduled to work on the holiday only, December 24, 25, 31, 1976 and January 1, 1977 shall be considered holidays for premium pay purposes.

1. When an employee is required by the Employer to work the holidays listed below, the Employer agrees to provide holiday premium pay at the rate of time and one-half the employee's regular rate for all hours worked between the hours of 12:00 a.m. and 11:59 p.m. (not to exceed 8 hours or 9.6 hours for those employees who regularly work 9.6 hours per day) on the following days:

   January 1
   Last Monday in May
   July 4
   First Monday in September
   Fourth Thursday in November
   December 24
   December 25
   December 31

2. The Employer agrees that if the holidays cited . . . fall on a Sunday and the following Monday is legally observed as the holiday, the day the holiday is legally observed shall be the day on which holiday premium pay shall be provided.

Other states have more or less than the ten holidays in Wisconsin. Pennsylvania, for example, has fifteen; New Jersey also has fifteen (including "personal leave days") plus general election days; and New York has ten days plus election day. No survey data on national practice are available, but the comparisons made in sixteen states indicate that the total number of holidays is about ten to twelve, which usually exceeds national and private sector holidays by at least two or three days.*

Whatever liberalization of holidays and pay rates occurs, corrections management should be primarily interested in seeing that increased costs are fully budgeted.

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*Significant variations include the Virgin Islands with 21 holidays; Puerto Rico with 18 holidays; and Louisiana and Tennessee with 15 holidays each.

IMPACT

In states with collective bargaining, holidays have become much more expensive for state corrections. Some union contracts have virtually doubled the costs of holidays by the provision that an employee who works holidays receives both premium pay for the day worked plus an additional day off later. This amounts to compensation at triple time rate.

State holidays and vacation plans are comparatively generous to employees even without these added union benefits. It is unfortunate that holidays have become so expensive to those few agencies which must function almost at full staff on those days.

Perhaps more significant is the increasing amount paid for nonwork time (almost one-fourth of the working year of 261 days using a five-day week) and the increased cost of all employee benefits, including vacation, which now exceed 40 percent of the total payroll. In the private sector, these "fringe benefit" costs also are increasing rapidly--from 28 percent of payroll in 1965 to 34.4 percent in 1971, and to 40.3 percent in 1975.[1] (This is based on 152 firms whose costs have been studied since 1955.)

Reference

1. U.S. Chamber of Commerce Survey, Wall Street Journal, 5 October 1976.

Related Issues

1.03 - Contract Evaluation

1.05 - Funding Contract Provisions

2.10 EMPLOYEE TIME OFF FOR UNION BUSINESS

Issue: What can management do to control the interruption of work schedules by employees taking time off for union business?

PRINCIPLES FOR ADMINISTRATIVE ACTION

The primary interest of prison management with respect to employee time off for union business will be to minimize and fully schedule these interruptions so that they may be maximally covered by replacement positions rather than by the use of overtime.

Management should insist on precise iteration of the individuals and exact times needed off in order to provide a basis for full budgeting of relief for this purpose. Paid and unpaid time off for union business should be clearly distinguished. The following is recommended:

Without Pay:	Matters of union (versus individual) affairs--e.g., local meetings, state and national conventions, negotiating planning and meetings, legislative lobbying and committee meetings, members [illegible] meetings of joint committees.
With Pay:	Matters of individual rights and benefits--e.g., grievance discussions or meetings at all levels, as witness in an arbitration hearing, as a union representative in meet-and-confer conferences with management, as appellant scheduled witness in a civil service hearing.

Typical Contract Provisions

Commonly stated policy is that union business will not be conducted on the job or during working hours except as provided in the contract.

Wisconsin-AFSCME provisions are shown below:

Unpaid Leave

Union Conventions, Educational Classes, and Bargaining Unit Conferences

A. Conventions

1. Duly elected Union delegates or alternates to the annual conventions of the Wisconsin State Employees Union, Council 24 and the Wisconsin State AFL-CIO Convention shall be granted time off, without pay, not to exceed a total of ten (10) work days annually to attend said conventions.

2. Duly elected Union delegates or alternates to the biennial convention of the AFSCME, AFL-CIO, shall be granted time off without pay, not to exceed a total of ten (10) work days, to attend said convention.

3. This time off may be charged to vacation credits, holiday credits, compensatory time, or to administrative leave without pay as the individual employee may designate.

4. The Union shall give the Employer at least ten (10) work days advance notice of the employees who will be attending such functions whenever possible.

B. Educational Classes

Employees who are elected or selected by the Union to attend educational classes conducted by or for the Union shall be granted time off without pay for the purpose of participating in such classes. The number of employees for all three bargaining units shall not exceed the following:

Wisconsin Home for Veterans local--5
Northern Colony local--5
Central Colony local--5
Southern Colony local--5
Mendota local--5
Winnebago local--5
University of Wisconsin-Milwaukee local--5
University of Wisconsin-Madison local--7
Wisconsin State Prison local--4
Statewide locals--7 (each)
All other locals--2 (each)

The number of work days off for such purposes shall not exceed seven (7) for each employee in any one calendar year. This time off may be charged to vacation credits, holiday credits, compensatory time credits, or to leave without pay as the employee may designate. The Union shall give the Employer at least fourteen (14) calendar days advance notice of the employee(s) who will be attending such functions.

C. Bargaining Unit Conferences

Attendance at bargaining unit conferences covered by this Section shall be limited to the regularly scheduled bargaining unit conferences held in May and September of each year of the contract and up to six (6) special bargaining unit conferences for the duration of the Agreement. This time off may be charged to vacation credits, holiday credits, compensatory time credits, or to leave without pay as the employee may designate. The Union shall give the Employer at least fourteeen (14) calendar days advance notice of the employee(s) who will be attending such functions.

D. Schedule Changes

Where an employee wishes to attend a Union educational class, Union convention, or bargaining unit conference as listed above requiring a change in schedule with another employee capable of performing the work, the employer will make a reasonable effort to approve the change of schedule between the two employees providing such a change does not result in overtime.

Attendance at Local Union Meetings

Local Union officers and stewards assigned to the 1st, 2nd or 3rd shift may be granted time off without pay to attend local Union meetings upon 24 hours advance notice to their supervisor, provided that it does not interfere with the normal operations or generate overtime.

Employees who are elected or appointed officials of the Union shall upon written request of the employee be granted a leave of absence without pay for the term of office, not to exceed one (1) year.

Training

A joint Management-Union Advisory Training Committee may be established when impending layoffs are verified. This Committee will consist of three (3) members of Management (two of which are Departmental representatives) and the third member as designated by the Secretary of the Department of Administration, and three (3) members representing the Union designated by AFSCME, Council 24, Wisconsin State Employees Union. Either party may substitute membership depending on the nature and location of the layoff.

The Committee will review the capabilities of the affected Employees, departmental needs, suggest jobs for which training may be appropriate, and recommend training programs to the affected departments. Union members will receive time off without pay for attendance at such meetings. This time off may be charged to vacation credits, compensatory time, regular days off due, or to administrative leave without pay as the Employee may designate.

Paid Leave

1. Union Management Meetings

A maximum of three (3) bargaining unit Employees shall be in pay status for time spent in Union-Management meetings held during their regularly scheduled hours of employment.

Notwithstanding the above, those departments which currently provide that five (5) or more Employees will be in pay status at the Union-Management meetings and such departments do not have a Health and Safety Committee, a maximum of five (5) bargaining unit Employees shall be in pay status for time spent in Union-Management meetings held during their regularly scheduled hours of employment. Under no circumstances will more than five (5) bargaining unit Employees be in pay status at the Union-Management meetings.

2. Health and Safety Committee Meetings

A maximum of two (2) bargaining unit Employees shall be in pay status for time spent in Health and Safety Committee meetings held during their regularly scheduled hours of employment.

> There shall be a maximum of six Health and Safety Committee meetings a year for each local union unless mutually agreed otherwise. All other aspects of the aforementioned meetings including time and location shall be determined by the local Union and local Management.
>
> Pay Status of Arbitration Witnesses
>
> When an employee is subpoenaed by either party in an arbitration case that employee may appear without loss of pay if he/she appears during his/her regularly scheduled hours of work providing the testimony given is related to his/her job function or involves matters he/she has witnessed while performing his/her job and is relevant to the arbitration case.

An unusual feature of the Wisconsin-AFSCME contract is the Division of Corrections' responsibility to release any three union members (selected by the union) on a full-time basis for assignment by the union to chief steward duties. These three employees will cotninue to receive full cooperation and related benefits of departmental employment during such periods of assignment. Such practices in federal agencies with union contracts are illegal as specifically ruled on by the General Accounting Office in 1976. Their legality in state systems, however, seems not to have been tested.

In summary, union business specifically refers to such functions as those spelled out in the Wisconsin-AFSCME contract:

- Executive Board of Union (regular monthly meetings and no more than six special meetings per year);
- State Union Conventions (elected officers and representatives only);
- National Union Conventions (elected officers and representatives only);

- Union Educational Classes (number not designated);
- Local Union Meetings (number not designated);
- Bargaining Unit Conferences (number not designated);
- Contract Negotiation Meetings (12 union members);
- Joint Management-Union Advisory Training Committee on Layoff Policies and Procedures (three union members).

Other types of union business are associated with paid time off: e.g., local officers, stewards, and members in assisting employees in the grievance procedure, in grievance meetings with management, in meet-and-confer meetings with management, both regular and special, in presenting information to management and to arbitrators, fact-finders, or mediators in grievance procedure step 5, and related appeals, and in service on permanently established Joint Management Union Committees.

Other time off for union business can be substantial where it involves releasing union officers or stewards from their posts to meet with an employee on a possible grievance, and to meet with supervisors and the employee on such grievances. Contracts generally provide for such relief whenever feasible. To simplify relief, union officers and stewards on each shift usually are given assignments where relief is most easily arranged. Union officers are sometimes given "super-seniority" for any shift and post to maximize convenience for the union as well as prison management.

IMPACT

The impact of time off for union business, with or without pay, is a substantial diversion of staff from other duties. To the extent that it is also paid time, it will burden the institutional budget unless it has been provided for by appropriations specifically for this purpose, which was not done.

From the language of the provisions cited above, it might seem that employees could take off 20 to 30 days without pay or as a charge to vacation time for these matters of union business. A subsequent section, however, alters this impression:

> Loss of benefits: Employees shall receive their regular rate of pay for the first 174 hours of time spent per calendar year in authorized union activities contained in Article II. . . .

In other words, each union official will receive 21.7 days off with pay, and nearly all will require replacement at an overtime rate. The actual cost for these days off would be more than 32 days at straight time. Assuming an average daily rate of $44, the annual cost will be approximately $1,408 for each employee.

Cost estimates for the Wisconsin Division of Corrections for time off with pay for union business have been made by the MERIC staff:

Paid time for attending conventions, union meetings, bargaining unit meetings, and union training:	25 employees x 32 days
Chief stewards' assignments:	3 employees x 365 days
TOTALS:	1,895 man-days 8.6 man-year equivalents $155,633 man-year costs at overtime replacement rate

Unless funds are authorized for such paid relief, the Division will have to absorb a considerable direct and indirect cost. Additionally, while no time studies have been made on this subject, the assignment of executive, supervisory, and operating manpower to union-management relations matters would probably be about as great as the man-year equivalents for direct diversion of correctional officers and sergeants.

The impact of time off provisions is greatest when there are large numbers involved at the same time, as for conventions and contract bargaining sessions. When this occurs, replacement is more difficult to schedule and will involve a substantial proportion requiring relief at the overtime rate. Prison management is rarely hard-nosed about accommodating union requests for time off even if it is discretionary under the contract terms. Such a policy of accommodation is advisable, but the direct costs should be calculated for use in future contract evaluation and renegotiation.

Related Issues

1.03 - Contract Evaluation

2.08 - Leaves with Pay

2.11 - Leaves Without Pay

2.11 LEAVES WITHOUT PAY

Issue: What are the trends in leaves without pay under union agreements? How can prison management interests be best served in providing these leaves?

PRINCIPLES FOR ADMINISTRATIVE ACTION

The variety of leaves without pay, as well as the amount of time off authorized, has increased extensively under collective bargaining agreements. Management will be concerned primarily with the effect of such leaves on the stability and adequacy of the work force.

In Wisconsin, for example, employees may take up to 52 months of educational leave at their own option. Employees can elect to go to school on less than a full-time basis, and their schooling does not have to be job related or for the purpose of professional advancement. In one Wisconsin section with an office of fifteen employees, eleven of them are working 70 percent of the time while attending school. In total, this is an equivalent of three man-years lost. The office is understaffed but the Department of Administration (budget division) will not fill in behind these employees. Therefore, they will have to work this way (short-staffed) as long as the eleven employees are attending school.

In prison operations, the great increase in leaves without pay for union business, maternity and paternity leaves, educational leaves, plus existing military leaves and other personal leaves can cause serious staffing difficulties and sharp increases in overtime. It would be reasonable to permit the corrections administrator to use his own discretion in authorizing such leaves whenever state budget policy does not allow replacement of those on leave.

IMPACT

As indicated in previous discussions of leave with pay for union business, the full impact of any type of leave can be seen only by reference to many sections of the agreement. For example, leaves without pay are covered under "union business," "union security," "leaves without pay," "childbirth leave," and "leaves of absence."

In Wisconsin, most leaves without pay for union business were converted to leave with pay in the last contract by inserting a one-sentence paragraph stating that up to 174 hours of leave under the preceding article were to be charged to leave with pay.

Varied practices are shown in Table 12.

TABLE 12

LEAVE WITHOUT PAY: COMPARISON OF FOUR UNION CONTRACTS

PROVISION BASIS	NUMBER OF DAYS AUTHORIZED			
	Pennsylvania	Wisconsin	New Jersey	New York
1. Union Business (full-time leave)	2 years	1 year	4 years	LWP
(a) Conventions and Meetings	4 weeks	174 hrs. paid*	130 days	LWP
2. Educational Leave	1 year	52 months	1 year**	n.s.
3. Childbirth Leave	6 months	6 months + 6 months discretionary	n.s.	n.s.
EMPLOYEE UNION	AFSCME	AFSCME	PBA	AFSCME

*Union conventions, educational classes, bargaining unit conferences, attendance at local union meetings, plus actual time for twelve union members of bargaining team at executive board meetings and in contract negotiations

**At employer's discretion

PBA = Policemen's Benevolent Association
n.s. = not specified
LWP = leave with pay reimbursed by union

Related Issues

1.03 - Contract Evaluation

2.08 - Leaves with Pay

2.10 - Employee Time Off for Union Business

2.12 REST PERIODS AND MEALS

Issue: What management problems arise from the provision of rest periods and meals to employees?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Rest Periods

A fairly common provision can be seen in the Wisconsin-AFSCME agreement:

> All employees shall receive one (1) fifteen minute rest period during each one-half shift except that those employees in positions which require the uninterrupted presence of an employee shall receive such rest period only when qualified relief is available and practicable. The employer retains the right to schedule employee's rest periods to fulfill the operational needs of the various work units. Rest periods may not be postponed or accumulated--if an employee does not receive a rest period because of operational requirements, such rest period may not be taken during a subsequent work period.

If the contract provision is not qualified to exclude correctional officers, the union can grieve the department's inability to provide the rest period. In one state where this occurred, the arbitrator found the department in violation of the agreement, despite its claim that it could not comply, and ordered the department to provide the rest period or to pay overtime for the rest periods not provided. The department had to negotiate its way out of the impasse by agreeing to one additional salary step for the classes involved. The cost of the increase--nearly $2 million--was absorbed by the department since the legislature refused to allocate additional funds. The contract provision which caused the problem had never been seen by the corrections agency, since the master contract was negotiated and approved by the state employee relations director without the commissioner's review and approval. Nonetheless, the corrections commissioner was fired for this "fiscal irresponsibility."

The point is clear: Corrections chief executives must see that they are consulted in the negotiation process and that they have the opportunity to review the language of contract provisions before they are approved by the state. Even minor provisions which do not take into consideration the unique conditions of prison operations can later become major problems.

Meal Periods

There are various provisions concerned with meal periods. In the Wisconsin-AFSCME contract, they are as follows:

> Meal Periods
>
> No employee shall be required to take more than one hour as a meal period, however, this shall not be construed to interfere with the Employer's right to schedule employees to work split shifts.
>
> Meals While on Duty
>
> A. Where facilities are available and in operation the Employer will provide meals without charge to employees who are required, as a condition of employment, to take meals in the performance of assigned duties or responsibilities.
>
> B. All of the following conditions must be met to be eligible for meals:

1. The Employee works a straight 8 hour or longer shift without an unpaid lunch period.
2. Meals eaten while on duty must be taken at the employee's assigned work post.
3. Meals are delivered to the employee's assigned work post or would have been if so requested and food service facilities are in operation at the location and at the time the meal is consumed.

Since most correctional officers in prisons cannot be relieved for meals, they generally are required to eat on the job--usually a lunch which they bring with them. Provisions such as the above lead to a box lunch type of operation and the delivery of lunches to the various posts. It is inevitable that officers will have food preferences and that there will need to be provisions for a choice of food items. This adds to the cost and complexity of preparing and delivering the lunches. Inmates generally would be assigned to the tasks of preparation and some of the delivery. It is necessary to ensure that food from the prisoners' ration is not used for staff lunches.

Preparation of officer lunches is much more difficult for the first and third shifts. Where the institution has a snack bar operated by the employee association or union, these lunches also are purchased there and payment is made monthly by the institution for the lunches served. Otherwise, lunches usually must be prepared on the second shift and refrigerated until served.

Since meal provisions can present new management problems and costs, such provisions should be cautiously negotiated with full calculation of the operational impact, complexity, and direct costs.

IMPACT

In addition to costs and operational problems of preparation and delivery of meals, ordinary employee benefits, services, and conveniences are not equally available in all departments. The specific problems of prison operations should be carefully considered before general provisions are made to apply to prison employees.

Related Issues

1.03 - Contract Evaluation

1.05 - Funding Contract Provisions

2.13 UNIFORM ALLOWANCES AND REPLACEMENT

Issue: Are there any new provisions for uniform allowances and replacement which cause problems in administration?

PRINCIPLES FOR ADMINISTRATIVE ACTION

A reasonable allowance for initial purchase of uniforms and annual upkeep costs is a normal benefit which is widely available in the corrections field. Employee benefits have kept these allowances separate from compensation because of their tax-exempt basis.

In some states, the official uniform has been changed to a more comfortable and informal combination of blazer and slacks. The cost of these uniforms is considerably less than the amount spent for more formal uniforms, but they are more likely to be worn off duty and they tend to less durable. The lower initial costs may be fully offset by greater replacement costs so that previously established allowances may be adequate except for normal price increases.

Practices are extremely varied. In some states, uniforms are provided and replaced, and prisoner labor is used for alterations. The actual purchase price to the state under contract may be less than one-half of the retail price which employees would have to pay to retail uniform suppliers. The direct state purchase plan, however, is an administrative burden which most prison administrators would prefer to avoid. The problems are greatest where uniforms need tailoring and include shirts, ties, a summer and winter uniform, safety boots, and a work uniform (khakis or coveralls) for correctional officers assigned to "dirty posts" such as truck sally ports, work crew supervision, and special housing areas such as segregation and isolation units. The inventory of clothing may require the part-time assignment of a staff clothing officer. Even with such supervision, inventory losses may be considerable.

Recent collective bargaining contracts show no clear trends in uniform issue and replacement, in terms of how supplied and the number of clothing items included. Some contracts (e.g., Wisconsin) have adopted a liberal policy on the replacement of glasses, watches, and other personal items damaged while on duty. Previous policy had been to authorize such replacement when approved through the supervisory chain of command where damage resulted from a line-of-duty incident. (Replacement extended to clothing for all personnel--not merely correctional officers.) Management's concern in Wisconsin with the new provision is that they may be in the business of replacing off-duty damage as well as normal wear and tear to such items. This practice could be costly and inequitable if applied only to correctional officers, as is currently the case.

In addition to these problems, management is concerned with achieving an equitable basis for distinguishing between uniforms and uniform alternatives which are provided as a state expense. In particular, if special duty work clothes are provided correctional officers and supervisors in lieu of uniforms, how can these same types of garments not be supplied to blue-collar, tradesmen, prison industry, and farm personnel? While it is standard practice to provide work "whites" for culinary and hospital personnel, smocks or aprons to protect personal clothing also may be needed by vocational shop instructors, library and clerical personnel who are not usually provided them.

In states where all of the above classes are in different bargaining units represented by the same union, a reasonable management position on this subject would be to form a joint management-union committee to explore and advise on a more consistent and equitable policy involving the provision of or allowances for special clothing requirements.

Whatever policy is established, it seems advisable that an allowance for clothing be provided rather than storing state clothing purchases and issuing them through the institutions. Unions or employee cooperatives may be encouraged to take a role in such supply, however, because even with overhead and handling charges added to the clothing costs, state costs probably would be less than the actual costs of reimbursement to employees for retail purchase.

IMPACT

Policies and practices regarding employee uniforms, clothing, and personal items affect employee morale, institutional operating costs, and the sensitivity of other employees not receiving such benefits. Since every employee incurs some costs in supplying his clothing for work, the benefits provided to any group or class of employees should cover the additional costs of clothing, as compared to "normal" work clothing, not the actual cost of such clothing.

Unions may argue that if management has an interest in specifying what an employee should wear on the job, management must take some responsibility for providing such clothes. Thus, if management requires secretaries or counselors to dress in appropriate suits, those whose normal nonwork attire consists of blue jeans have been put to additional expense in meeting the employer's attire or uniform requirements.

Most correctional administrators are reluctant to become involved in such issues. It is difficult enough to deal with prisoners' clothing and other needs. The correctional administrator has no greater wisdom in this area of employee dress than administrators in other agencies.

Related Issue

1.03 - Contract Evaluation

2.14 SHIFT AND OTHER PAY DIFFERENTIALS

Issue: On what basis should shift and other pay differentials be provided? Are union negotiations influencing changes away from rational policy?

PRINCIPLES FOR ADMINISTRATIVE ACTION

There are only two bases for special compensation rates or "differentials":

1. Factors which make some positions less desirable than others. (Additional compensation is provided as an offset to make the work more acceptable considering the undesirable features.)
2. Factors in some job locations which adversely affect recruitment and retention of personnel. (The problem could be related to such nonwork factors as the nature of competitive salaries in the area, higher costs of living, or inconvenience and additional costs to employees, such as pay parking.)

Shift Differentials

Job factors may be influenced by the average age of employees, so that where there is a high proportion of younger correctional officers (frequently with young children), night shifts are exceptionally undesirable. On the other hand, older and single officers often prefer night shifts which permit more daylight hours for pursuit of their leisure time interests or part-time work elsewhere.

If prisoner conduct has made guard-to-prisoner contacts unpleasant, many officers will seek assignments which produce the least contact with inmates. Where there is seniority bidding for job posts, there is generally a mass flight of senior officers to noncontact posts, including those on the two night shifts. Under these circumstances, there is no need to provide a differential for such shifts because they are inherently desirable to enough employees without additional benefit. This is especially true since most of the posts on these shifts are also less difficult, require less skill, and are less demanding physically than the daytime posts--with or without prisoner contact. In this situation, the shift differential is dysfunctional since it encourages and rewards a practice undesirable to management.

There are some employees in many occupations who would always prefer the least demanding jobs. This may account for the opinion of local union officers in the Indiana prison (other than the maximum-security prison at Michigan City) who felt that the day shift was the most difficult and that any differential pay should go to the day-shift workers. (This was stated at a time when there were no shift differentials in effect.)

Where shift differentials are already established, even if the basis for them would not be valid today, the employees affected could certainly disagree. To eliminate differentials would constitute a pay cut--something the unions would never negotiate unless overall compensation gains were more than enough to offset the losses of differential pay. Accordingly, the force of existing practice is very difficult to overcome even if there are sound technical arguments against it.

Correctional administrators should examine the real effects of shift differentials and be cautious about, if not resistant to, establishing them or increasing them. This is particularly true where there is substantial seniority bidding for posts under the union agreement.

Other Pay Differentials

The other most common differential is established to meet unusual recruiting problems deriving from high competitive pay rates or distinctly higher costs of living--as occurs in an institution located in an urban area.

Area salary differentials are difficult to establish, present many administrative problems, and adversely affect employee mobility. Yet many jurisdictions have experienced no difficulty with above-minimum-step hiring rates for specific areas. For example, it might be appropriate in New York City to start state correctional officers at the third step in the salary range (roughly 10 percent higher than the starting rate in Attica) and at the second step in Albany. These rates normally would have to be approved by the civil service or central personnel agency and may require a special salary study to establish their efficacy.

There are relatively few problems associated with above-minimum-step hiring, but some employees who subsequently transfer to another institution could be working at one or two salary steps higher than other employees with the same length of service. Management can control this to some extent since inter-institution transfers normally are subject to the discretionary approval of the two superintendents or the commissioner's office, or both.

Hazardous duty pay rates are seldom applicable to correctional officers, but may be appropriate differentials for other classes. Hazardous duty pay premium or differential may be warranted for classes whose salary ranges are based on nonhazardous conditions normally faced by most employees in the various classes. A cook, a dentist, or a secretary in a prison may merit a pay premium in order to attract such personnel to prison employment.

In almost all cases, however, the work has enough other distinctive factors to warrant special classification. In some instances, merely interpreting all the job duties in the prison context would justify a higher grade; in others, specific considerations such as involvement in prisoner supervision, counseling, and evaluation are enough to justify a special class for correctional work.

Hazardous Employment Status

"Hazardous employment status" in some union agreements refers to an entirely different concept. In this case, it refers to certain presumptions of service connection with respect to injuries which occur incidental to employment. Employees whose workmen's compensation claims are pending settlement thus may be paid from the date of inability to work.

This provision also may include authorization to augment compensation to an employee who has been awarded workmen's compensation. Such an employee is paid the difference between that compensation and his last full salary rate for a specific period--usually one year or the duration of disability, whichever is less.

Presumption of Service Connection of Heart Diseases

The presumption of service connection of cardiovascular disease which occurs during employment usually is not a contract provision, but an amendment of the state workmen's compensation statute. This presumption applies only to certain employees--usually correctional officers. In most cases, service connection of heart disease is very difficult to establish. When the legislature recognizes the substantially higher rate of such disability among correctional workers, the presumption of service connection should not be limited to employees in the correctional officer series, but should be extended to all persons who regularly work in the prison and in assignments with prisoner contact.

Shift Rotation

There appears to be a trend toward permanent shift assignments rather than the historical pattern of periodic rotation, usually at three-to-six-month intervals. The change to permanent shifts may be due to the trend toward provision of shift differentials (which become pay increases employees do not want to lose) and unionization where seniority is increasingly a predominant factor in shift selection as well as post assignment selection.

The most unfortunate aspect of permanent shifts is that new employees do not readily gain the broad experience desirable for their development, and are not subject to evaluation of their performance in a variety of job assignments within the class.

Where sergeants are also in the bargaining unit, nonrotation will make it difficult to qualify for promotion to lieutenant where ability to command all posts on all shifts is necessary and expected. A study of the effects of permanent shifts and seniority post selection on the quality of staff development may be warranted in the near future.

The Prison Workweek Problem

Since institutional corrections moved from penitent isolation to myriad activities of work, rehabilitation services, recreation, and so on, new problems emerged: too much activity concentrated in a period of less than eight hours, and five workdays per week.

Security requirements are greatest when the movement is the greatest. The larger the institution and the greater the number of program locations prisoners move to, the more time is required to complete such moves. In some institutions, the actual program day is little more than five hours even though the prisoners are awakened at 5:30 A.M. with breakfast starting at 6:00 A.M. Movement to the work areas, schools, etc., starts between 7:30 and 8:00, but is usually not completed until 8:30 to 9:00. The movement to lunch begins between 11:00 and 11:30, and the return after lunch often is not completed until 1:30. The return movement to the cell blocks starts at 3:00 and is to be completed by 3:30 so that the 4:00 P.M. count will clear on time. Variations on the workday and count time do exist, but it is very difficult to change the amount of time devoted to programs. Thus, prison industry factories, schools, and vocational shops are all with foremen, teachers, and instructors who deliver their personal services about one-half of their total workday.

The underutilization of program resources and the excessive idleness during the other periods bewilders the best of superintendents. Any significant change can be costly, primarily because more activity on other shifts requires additional correctional officers. But many prisons have attempted, with a relative degree of success, to extend the prisoner-activity day and reduce the collision among competing programs. This has been achieved through various combinations of shift changes, movement changes, and the scheduling of personnel to different hours and days. Whenever odd shifts are established (e.g., some correctional officer shifts staggered to bridge the day and evening shifts, correctional counselors working evenings and weekends, and teachers holding evening classes), the employees involved are usually extremely resistive. Among the chief problems which are presented are car pool arrangements, difficulty in working when the records office is not open, and the lack of supervisors.

Some extreme solutions have included putting correctional officers on a four-day, ten-hour shift; running prisoner industries on a night shift; and having prisoners take box lunches to their work or school location in order to eliminate the noon meal movement. There is much need for innovation in this area, especially when greater productivity in all such activities and programs is demanded.

IMPACT

Shift differential rates have not been surveyed for all states. The rates in a few states are tabulated in Table 13.

TABLE 13

SHIFT DIFFERENTIALS IN FOUR STATES

STATE	FIRST SHIFT Midnight - 8:00 A.M.	SECOND SHIFT 8:00 A.M. - 4:00 P.M.	THIRD SHIFT 4:00 P.M. - Midnight
Pennsylvania	$.15/hour	--	$.15/hour
Illinois*	$.12/hour	--	$.12/hour
Wisconsin	$.20/hour	--	$.15/hour
Minnesota	$.15/hour	--	$.15/hour

*Shift schedules by one hour earlier than times indicated (e.g., the second shift is 7:00 A.M. to 3:00 P.M.)

At $.15 an hour, the night-shift differential amounts to about $315 a year for each employee, and is taxable along with the base salary as ordinary income. The annual increased cost of 50 employees working night shifts at $.15 shift differential would amount to $15,750--or somewhat less than the equivalent of one full-time correctional officer with all fringe benefits.

While direct costs are not highly significant, the extent to which differentials may be an undesirable incentive to employee shift selection should be answered by research. The unfortunate situation in those states already paying shift differentials is that their costs could be viewed as relatively nominal compared to either the costs of impact evaluation or the political costs of attempting to change or abolish the practice.

States which do not have shift differentials are in a position to examine the issue more fully, institution by institution. As indicated, the issue can assume a different character as other closely related issues are also considered: (1) the extent of seniority bidding for shifts and assignments, and (2) the rotation of shifts.

Shift rotation policy and practice is seldom mentioned in union contracts so that review of contracts does not reveal current practices or the extent of union interest in this subject.

Related Issues

1.03 - Contract Evaluation

1.11 - Manpower Management in Prison Administration

2.15 LENGTH OF SERVICE PAY

Issue: What is the justification for length of service pay? Are there any effects adverse to correctional management?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Length of service pay or bonuses can be justified in terms of: (1) providing a pay increase without the cost of paying all employees; (2) providing a pay increase for those who no longer would receive increases within the merit salary step plan; and (3) offering an incentive for employees to remain in state employment after reaching the salary maximum of their classification.

As developed under collective bargaining, such increases reflect the strong emphasis of unions on seniority privileges and benefits. While it only applies to a portion of the work force at time of adoption, it will be seen by all employees as a benefit they will receive in the future.

The extent and nature of prevailing practice is not revealed by any national survey known to project staff. Some implications may be drawn from a summary of practices in seven states covered in the MERIC project research (see Table 14).

It is clear that length of service pay or bonuses is an area of potential rather than present problems. One exception may be in the development of extended salary plan steps. While in some states the typical five-step plan has been increased by one or two steps, this is usually based on step intervals of less than the

TABLE 14

LENGTH OF SERVICE PAY/BONUSES IN SEVEN STATES

STATE	AMOUNT OF PAYMENT AND BASIS
Illinois	None indicated in union agreement
New Jersey	None indicated in union agreement
New York*	20 days per year plus: 5 years service, 5 days added; 20 years, 8 days added; 30 years, 10 days added
Oregon	None indicated in union agreement
Pennsylvania	None indicated in union agreement
Washington	None indicated in union agreement
Wisconsin	5 years service, $50/year payment; 10 years., $100; 20 years, $200; 25 years, $250.

*Many states have such in-lieu-of-pay compensation for length of service. New York is reported here because it is probably more generous than most: An employee with five years seniority receives five weeks vacation annually. Note also that all vacation plans reviewed had some progression of amount of vacation earned increased in terms of length of service.

5 percent usually found in five-step plans. However, the union pay request in negotiations with Oregon submitted a ten-step salary plan with all steps at 5 percent intervals. The range of increases after the initial employment step is nearly 50 percent (nine incremental increases of 5 percent over the preceding step provide a progression of more than nine x 5 percent at the tenth step). If this were approved, the pattern of time at each step probably would more closely resemble the federal pay plan for civil service employees (general service schedule) where steps 1-6 are yearly, 7-9 are at two-year intervals, and steps 9-10 are at five-year intervals.

The concept behind extended salary steps is much like that of any incremental pay step plan: The employee's value to the employer is increased as experience is gained. Almost all plans begin with the basic concept of increases to satisfactory employees as a "performance" or "merit" increase. Even before collective bargaining, success in operating such pay plans on other than a seniority basis was exceedingly rare.

Union agreements have further diminished management discretion to withhold salary step increases for less than satisfactory employees, although in some states merit provisions are contained in the union agreement. For example, the Oregon agreement with AFSCME and the Oregon State Employees Association (coalition bargaining) contains the following provisions:

SALARY ADMINISTRATION

The parties agree that salary administration shall be based upon a performance evaluation system uniformly applied in the classified service. In the interest of improving the performance appraisal system, it is agreed that suggestions and criticisms shall be subject to mutual discussions, but that provisions of this Agreement shall not be modified by existing or future Executive Department, Personnel Division or agency policy unless there is agreement of the parties hereto.

Employes shall be granted annual performance pay increases on their eligibility date provided the employe is not at the top of the salary range attached to his/her classification, and provided the employe's performance is satisfactory as reflected in his/her performance appraisal.

Performance shall be deemed satisfactory when an employe's performance appraisal indicates that he/she meets or exceeds all major requirements (Categories A and B). An employe rated in Category C shall receive an increase unless his/her needed improvements are major in nature when related to the work plan and/or position description.

Employe complaints resulting from failure to receive a performance pay increase may be processed through the grievance procedure.

Performance shall be measured using all of the following criteria:

1. Classification specifications developed and promulgated by the Personnel Division of the Executive Department. In the development of new or revised specifications, the Personnel Division of the Executive Department shall give full consideration to recommendations of the Employe Representatives.

2. An individual position description, reduced to writing, which shall delineate specific duties within the classification specification peculiar to an individual employe's own job. A copy of the class specification shall be reviewed with the employe. A copy of the position description shall be given to and reviewed with the employe. A copy of the class specifications shall be made available to the employe at any time at the employe's request. The individual position description shall be subject to at least an annual review with the

employe and any changes shall be developed by the employe and his/her supervisor. Nothing contained herein shall compromise the right or the responsibility of the Employer to assign work consistent with the classification specification. All work assigned shall be described within the position description.

3. A written work plan, based upon the position description and developed by mutual agreement between an employe and his/her supervisor. Each work plan shall delineate job requirements, job expectations, anticipated goals, set objectives, productivity expectations, and an employe development program. Nothing contained in this provision shall compromise the right of the employe during the process of reaching agreement on the work plan to demand a reasonable workload. Elements of appraisal shall be those specifically described by the work plan which shall be consistent with the classification specification and position description with the addition of those considerations contained on the Report of Performance Appraisal form (Form No. PD-140). When appropriate, any unique problem solving or innovative work projects may be developed and written into the employe's work plan, but shall not expand employe duties beyond the level of the duties assigned to that classification. An employe shall be given a copy of his/her work plan at the time it is developed and reduced to written form.

4. Periodic review of each written work plan shall be made by an employe and his/her supervisor. Any changes in the work plan that are developed by the employe and his/her supervisor shall be by mutual agreement. These changes shall be reduced to writing and a dated copy given to the employe. When a periodic review indicates an employe is not meeting the expectations of the work plan, such notice shall be reduced to a written dated statement with a copy given to the employe.

The above criteria shall be the only factors upon which an employe's performance is judged and upon which annual performance pay decisions are determined. Salary denial based upon any factor other than those listed above, except those based upon statutorily defined authority shall be invalid.

Any employe who is denied an annual performance pay increase based on the above criteria shall have the right of appeal through his/her agency grievance procedure and subsequently may exercise the right of appeal to the Public Employe Relations Board.

Employes shall be eligible for salary increases at the following intervals: (1) Upon completion of the initial six months in state service or upon the completion of the trial service as provided in ORS 240.405, subsection 4; and (2) Annually after the initial increase until the employe has reached the top step in his/her salary range.

The initial increase or trial service increase shall be granted upon initially gaining regular status in state employment.

There shall be no pre-determined limitation imposed upon the number of annual performance pay increases to be granted or denied, or any pre-determined limitation on this number of performance evaluations allocated to any given category.

The above salary administration plan shall become effective July 1, 1975, and shall apply to annual performance pay increases. It shall be the responsibility of the Personnel Division of the Executive Department to administer the terms, conditions and provisions of this contract relative to agency performance hereunder.

EMPLOYE NOTICE

The Employer shall give notification in writing of granting or withholding of merit increases to all employes at least fifteen (15) days prior to the employe's eligibility date unless a different time period is specified in his agency agreement. If the merit increase is to be withheld, the reasons therefore shall be given in writing at the time of notification. Formal grievances resulting from the withholding of a merit increase shall be presented directly to the top step in the agency grievance procedure. If not resolved at this level within the time period specified in the agency agreement, the grievance will be presented to the Personnel Division for review. The Personnel Division shall review and give a written response within ten (10) working days after receiving the complaint. If satisfaction is not received, the employe or his representative may file the appropriate further appeals provided for in the grievance procedure.

If, as a result of such a grievance, a decision is made to grant an increase initially withheld, the effective date of the increase shall be retroactive to the original eligibility date.

IMPACT

The effects of length of service bonuses may not be what they are purported to be. There is no known evidence to suggest that employees have been retained by such benefits except that some overage employees eligible for retirement may remain on the job for a number of additional years.

It should be in the interest of both state management and union members as a whole to develop high performance standards and motivation throughout the entire work force. While performance criteria for pay advancement may be difficult to sustain, adoption of progression of pay based only on seniority would close the door on future efforts to make performance or merit salary increases really workable.

Related Issues

1.09 - Civil Service Interrelationships

3.07 - Position Classification and Pay Plan

2.16 LABOR RELATIONS NEUTRALS

Issue: Should labor relations neutrals be used to avoid the political risks in making a difficult or unpopular labor relations decision?

PRINCIPLES FOR ADMINISTRATIVE ACTION

The group commonly referred to as "third-party neutrals" can play an important role in public sector collective bargaining. These labor relations professionals, who stress their neutrality toward both management and labor, frequently act as fact-finders or assume a quasi-judicial role in settling employer-employee disputes. In the private sector, they have served primarily in the settlement of rights disputes or grievances which usually involve the interpretation or application of an existing collective bargaining agreement. In the public sector, however, neutrals are increasingly becoming involved in the resolution of "interest disputes"--disputes over the provisions of a collective bargaining agreement in the process of negotiation. Procedures for resolving public sector interest disputes have been established partly in an attempt to find an alternative to public employee strikes.

Commentary

The techniques for resolving interest disputes range from third-party mediation, fact-finding, or voluntary or compulsory arbitration, to combinations of mediation, fact-finding, and arbitration. Most of the collective bargaining states have established some kind of procedure for resolving impasses in interest disputes involving state employees. Virtually all jurisdictions provide for some form of mediation followed by some kind of fact-finding. Connecticut and New Jersey provide for voluntary arbitration. In Washington State, the Personnel Board has binding authority over collective bargaining disputes concerned with matters other than wages. In New York and Florida, after mediation and fact-finding have taken place, the state legislature becomes the final arbitrator for impasses in the negotiation of contracts for state employees.

Of particular interest are the provisions for arbitration in Oregon, Pennsylvania, and Rhode Island. Rhode Island legislation provides for binding arbitration over all interest disputes, except that with respect to wage disputes the arbitration decisions are only advisory. In Oregon and Pennsylvania, the labor relations legislation contains special provisions for public safety employees, including correctional officers. The provisions call for compulsory arbitration over all bargaining impasses involving correctional officers, subject to legislative approval. In Pennsylvania in 1976, AFSCME separated the bargaining unit containing correctional officers from its multi-unit bargaining so that the correctional officers' demands could be taken to arbitration.

One issue related to compulsory arbitration is the question of whether legislative and executive departments should be permitted to delegate their authority to private individuals. In no state studied has the legislature agreed to be bound by an arbitration decision; however, state legislatures have passed laws binding local units of government to fund and implement arbitration decisions. Court challenges on this matter--in Michigan, Pennsylvania, Rhode Island, and Wyoming--have been rejected ". . . on the ground that the arbitrators constitute public agents or state officers when carrying out their arbitration function, or that the presence of standards in the statute for the guidance of the arbitrators is sufficient to overcome the delegation argument."[1]

Nevertheless, third-party dispute resolution procedures further weaken the authority of the correctional administrator. Particularly when arbitration is compulsory, the administrator is legally required to operate his agency according to the provisions of a collective bargaining provision formulated by a neutral third party--a party which does not have to face the practical consequences of the contract provisions and may not understand the operation of correctional institutions.

An interesting side effect of using labor relations neutrals in fact-finding, arbitration, and the framing of contracts is the reduction of political costs to both management and the leaders of employee organizations. An elected official who wants to increase public employees' wages in a time of tight budgets might thereby receive unfavorable publicity; thus, he may readily agree to fact-finding or arbitration proceedings in which a third party--a labor relations neutral--could take the brunt of public outrage.

IMPACT

The involvement of third-party neutrals as arbitrators is most prevalent in grievance resolutions (see Issue 2.02 - Grievance Procedures, Steps 4 and 5). The problem there is the same: How can the department or state properly delegate to an arbitrator or panel of arbitrators the power of making critical decisions under binding arbitration rules? While this is being done to some extent in local government with the blessing of the courts, the authority of the state to commit its executive and legislative branches to binding arbitration has not been subject to definitive court review.

The state correctional administrator's ability to carry out his legal responsibilities is diminished and diffused by the labor relations process. In the 1970s, as correctional problems become more severe as a result of rising prison populations and tightened budgets, and as the public becomes more concerned about the effectiveness of correctional programs, the administrator's ability to solve major operational problems and policy issues is being reduced by the fragmentation of his authority. Increasingly, the courts, federal and state regulatory agencies, and labor relations professionals are making decisions affecting the policies and operations of correctional institutions. To be sure, this fragmentation of authority has brought about many favorable changes in program and policy, but it has also created many problems.

Problems are bound to exist when administrators are given the responsibility for running correctional agencies but are increasingly deprived of the authority to do so.

Reference

1. Benjamin Aaron et al., Final Report of the Assembly Advisory Council on Public Employee Relations, State of California, 15 March 1973, p. 216.

Related Issues

1.00 - Enabling Legislation

2.02 - Grievance Procedures, Steps 4 and 5

2.17 TEMPORARY ASSIGNMENTS TO HIGHER OR OTHER CLASSES

Issue: Can the flexibility built into the correctional officer classification series continue to permit relief or temporary assignments to other job classifications in the prisons?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Few, if any, contract provisions have been unduly restrictive to management needs, but some have provided reasonable penalties to curtail some common abuses. One such abuse is for management to assign a correctional officer to correctional sergeant duties (without pay increase) for six months pending completion of the civil service examination for the class. Most civil service systems have provisions for temporary or emergency appointments.

It is typical in prison staffing to have a technician-specialist classification for such continuing assignments as laundry supervisor, sewage plant operator, boiler plant operator, culinary supervisor, or records officer. During short-term absences of incumbents in these classes, where it is essential to keep these services in operation, it is usually possible to find a correctional officer with relevant experience who can be detailed to the temporary vacancy. (Such positions should have their relief for regular days off, vacations, sick leave, and other relief bases provided for in the post assignment schedule.) These temporary assignments may be in the same salary range as the correctional officer class or they may be higher or lower.

Another common out-of-class assignment involves the relief or temporary replacement of sergeants, lieutenants, and captains by assignment of an employee in the respective next lower class. Usually there is no increase in compensation for these temporary assignments which normally range from a few days to two weeks. Under nearly all union contracts, this is unchanged except:

1. The selections are to be made by seniority within the same shift.
2. Temporary compensation increase to the minimum pay step of the higher class or a one-step increase (whichever is higher) is required for assignments over two or three weeks duration.

Problems can arise if the requirements for selection based on seniority are too strict and the demand for relief has been made without prior planning. Frequently, the need for a temporary replacement is sudden and unexpected. Union insistence of going to seniority bidding from all shifts restricts promptness of replacement and is disruptive to many other work schedules.

The solution, on the other hand, is not very difficult, involving prior screening and seniority ranking of employees interested in such assignments by shift, or reference to the existing civil service list for the higher class (with seniority already credited for list order) arranged by shift. Employees on these lists receive the opportunity to demonstrate their proficiency in these higher classes. At the same time, full replacement schedules need to be prepared in advance for planned leave or other absences.

There should be no fiscal problems in financing temporary replacements in these classes, even where one-step salary increases are involved, if the relief is properly planned for in the post assignment plan. There is no adequate justification for assigning employees to higher classifications for extended periods for management's convenience without providing a reasonable compensation increase for that period.

IMPACT

The impact of providing temporary replacements from various correctional officer classifications (including classes not covered by collective bargaining or between classes represented by two or more bargaining units) should be minimal if detailed planning and consultation with the respective union local officers occurs.

Related Issues

1.06 - Contract Administration

1.11 - Manpower Management in Prison Administration

2.18 SHIFT OVERLAP

Issue: Shift overlap and its effect on the number of hours correctional officers are required to be at the work site seems to be a problem in many states. What are the problems and how can they be resolved satisfactorily?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Three types of problems have been noted:

1. Inherent Working Conditions

No matter how the workday is divided (e.g., three 8-hour shifts or two 12-hour shifts), correctional officers will not be able to leave their posts until relieved. "Incidental overtime" always occurs in movement through the institution to the work location. Such overtime increases to the extent that wash-up or clothing change is needed, shift rollcall is practiced, and the physical size of the institution involves greater distance to posts. Management feels that employees understand these working conditions when they are employed, and that the pay plan has taken these factors into account.

2. "Incidental Overtime"

Incidental overtime is defined broadly as small amounts of time, e.g., 1 to 15 minutes at the end of the working period not regularly required of the employee, which are not considered overtime for purposes of compensation credit.

The definition obviously is broadened for correctional shift work, as it is for similar work in hospitals and other 24-hour institutions.

In particular, correctional officers may be held over to complete their assigned tasks where the capacity to avoid overtime is shared by the entire shift rather than fixed on a single employee. Accordingly, if the prisoner count does not clear, recounts must be taken until all prisoners are accounted for or the identity of the escapee(s) is determined. This additional time, which may be one-half hour or more, was rarely treated as overtime. (It became overtime and more was earned if there was an escape and some staff held over for pursuit of escapees and related duties.)

3. "Rollcall Overtime"

At shift change, the incoming shift was expected to report in ten or fifteen minutes before actual shift change. This period enabled the captain to determine absences and to provide any special instructions regarding shift problems, special schedules or activities, etc. This brief period also is used to distribute departmental announcements and to call attention to new orders from the superintendent, as well as other notices.

Overlap Practices under Management-Union Agreements

In initial negotiations the premium pay overtime provision leads to the question of how much "overtime" should be allowed before correctional officers earn overtime credit. The answer generally has been 25-30 minutes, after which all time was overtime.

Subsequently, correctional unions have had the opportunity to obtain additional pay by considering the three types of overtime (inherent working conditions, incidental overtime, and rollcall overtime) together as deserving of compensation. In New Jersey, such an agreement was considered by the employee relations director as a non-economic matter, although it resulted in the equivalent of one salary step forward by converting 20 minutes to cash on a time-and-a-half basis.

While the practice of compensating all normal shift overlap has not yet been extended to many states, this may become the next line of union demand when current contracts are up for renewal. In most states, corrections management will be on solid ground if it is claimed that this time has been reorganized as a part of the basic working conditions of the classes involved. Nevertheless, negotiations may proceed on the basis that the overtime was not fully recognized and, since it also is not uniformly distributed, that a special provision for overtime rate or flat rate allowance is warranted. In such cases, correctional management would be better off to agree to a flat rate allowance for the specific shift overlaps in lieu of overtime. This would have the advantage of discouraging further expansion of shift overlap time by employee actions.

IMPACT

In addition to the above effects, any shift overlap provisions and increased benefits will require equitable adjustments for other employees whose workdays in the prison are similar, if not identical, to those of correctional officers (e.g., sergeants, lieutenants, and culinary, hospital, engineering, and other maintenance staffs).

Related Issues

1.05 - Funding Contract Provisions

2.03 - Overtime and Sick Leave

2.19 RETIREMENT BENEFITS

Issue: Should retirement benefits be included in bargaining unit negotiations? What are the organizational and operational interests of correctional administrators in this area?

PRINCIPLES FOR ADMINISTRATIVE ACTION

It is almost a universal problem in federal, state, and local governments that pension program increases have been overused as an attractive alternative to salary increases. It is also true that nearly all of these programs have not been properly funded so that staggering deficits now apparent will soon become a major claim against public revenues.

Until this situation is corrected by appropriate funding modifications, it is a time bomb ticking away in the public treasuries--from New York to California. The explosion, if it occurs, is bankruptcy: the receivers will buy out existing pension obligations in terms of x cents per dollar of pension, probably including portions of invested employee and public jurisdiction contributions.

Since these issues involve complex financial and actuarial considerations and political concerns at the highest level, the correctional administrator can be expected to be involved only minimally.

Many jurisdictions have already limited collective bargaining to compensation matters other than retirement plans, and it is now widely believed that such a policy should be universally adopted. However, this does not preclude union representational involvement with the retirement boards, legislative committees, and the governor's budget staffs in pressing for further benefits or opposing benefit reductions. The extremely high cost of such benefits projected over many years of retirement, and increasing with life expectancy and inflationary factors, means that such plans must be devised and modified with much more care. There is also some concern that retirement plans should be more uniform rather than containing contribution rates, eligibility ages, and pension rates which vary for different occupational groups.

IMPACT

The correctional administrator should have two concerns about retirement plans: (1) the extent to which increased retirement costs will restrict the growth of the general budget, and (2) the extent to which early retirement may be curtailed and how that might affect superannuation of prison manpower.

Correctional underfunding has been a chronic problem for over a century. It does not seem likely that reduction in total state fiscal resources due to sharp increases in pension disbursement could make the corrections budget any worse than it has been in previous periods of prosperity and recession. Yet excessively generous or underfunded retirement plans bear directly on the adequacy of the state correctional system.

The corrections administrator is as sensitive as any public executive to the social and economic impact of both extremes--runaway taxation and underfunding of human services. Growing unemployment and deterioration of education, public health, and welfare services can generate more crime and, at the same time, decrease the likelihood of full social reintegration of the released offender. Correctional administrators thus have a unique perspective on the importance of the entire state budget. He directly feels the effect of overall economic decline in the increase of prison populations. He must be able to articulate the paradox that state corrections budgets must be increased as other areas of state expenditures are decreased.

Union Role in Negotiating Pensions

Public service unions in the past have successfully pressed for pension benefits or employee contribution reductions and employer contribution increases in funding such pensions. Yet the responsibility for poor judgment in agreeing to such proposals and deception* or negligence in fiscal analysis, as well as in funding pension reserves on a current basis, falls exclusively on the executive and legislative branches. The fact that public unions have proposed and lobbied for pension plan improvements in no way justifies the failure of legislative and executive branches to estimate the fiscal impact of such changes and to keep the public informed.

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*The techniques of deception have included both the failure to project pension payment increases due to salary inflation and the failure to make such projections known. Additionally, in some jurisdictions, the executive has not made the required payments to the pension funds or has improperly withdrawn public share funds from the pension fund for general budget use. This involves employee share withdrawals on separation which are actuarially anticipated but with the employer share left in the fund. This practice becomes increasingly critical when the share contributions to the fund are shifted from a 50-50 basis to a 90-10 (employer-employee) basis.

Among the corrective prescriptions is "full disclosure" as recommended recently by the California Taxpayers Association.[1] Their summary of recommendations, portions of which are reproduced below, appear to reflect current public concern about the problem and its causes.

> ### Full Disclosure
>
> To protect the soundness of public retirement systems in the face of cost increases we recommend full disclosure of financial conditions annually. We also recommend that "actuarial assumptions"--projections of inflation, life expectancy, and other factors influencing pension costs and revenues--be clearly defined and regularly updated to insure sound projections.
>
> ### Cost Evaluations
>
> A major cause of today's massive unfunded liabilities has been adoption of benefit hikes in the past without projecting costs or specifying sources of financing. We recommend that these data be required before enrichments are adopted by a governing body. Cost data should be on a multi-year basis showing the climb until the proposed benefit is in full operation.
>
> ### Disability Retirement
>
> Disability retirement is also growing explosively, and police and firemen seem to be the main cause. Utilization of this enriched form of retirement grew

by 110% in a recent five-year period even when adjusted for benefit increases, inflation, and growth in the labor force. Safety disability costs have risen at more than twice the overall rate. Increasingly, the cause of retirement has been "cumulative trauma" complaints such as back injuries. Generous benefit formulas encourage both malingering and "second career" abuse. The time has come to tighten up eligibility determination and benefit formulas for disability retirement.

Benefit Rollbacks

Public reaction against excessive pension plans for government workers has risen especially when generous benefits contribute to a local fiscal crisis. Voters are beginning to approve rollbacks in retirement programs. But the courts have held these rollbacks can apply only to future employees. In Oakland, for example, a policeman or firefighter hired on June 30, 1976 can look forward to a pension worth 30% more than someone hired by the city to the same position on July 1, 1976, because of the effective date on a city ballot proposition.

The freeze of existing benefits neither creates equity within the public labor force nor is it fair to taxpayers seeking relief from past over-commitments. We recommend a constitutional amendment to permit a phased rollback in pension rights of current employees of up to 1% per year remaining in their working life, where such a rollback is needed to equalize their benefits with those adopted for future employees. The 1% limit would mean that persons about to retire would not be affected while others would have a chance to plan ahead. Further, the reduction could only occur to the extent needed to create equity among employees with respect to pension rights.

Employee Contributions

Public pension plans are funded by contributions from employer and employees, and from interest earnings. In an inflationary economy, interest earnings have soared. But the benefit of this income has been realized almost entirely by employees in the form of a steadily dwindling percentage of support to pension funds from worker contributions, and a higher fund payout of inflated benefit dollars. The employer has hardly been relieved by the massive rise in investment income. This benefit should be more evenly shared between taxpayers (employers) and future fund recipients (employees). We also believe the reduction or abolition of employee contributions to their own retirement plan is likely to encourage excessive and irresponsible demands for enrichment.

Retirement Formula

The service retirement formula determines the dollar value of a pension. It is based on final salary multiplied by a percentage based on years of service. This formula must be protected in three ways. First, pensions based on full-time work should not be extended to part-time employees. Second, extensive credits should not be given for work with other employers, particularly when the work was unrelated. Third and most important, "final compensation" should be computed over at least the highest three-year period. Using a single high years' pay creates the potential for abuses.

Retirement Boards

In some local jurisdictions, it is not the elected governing body but a retirement board which makes key decisions on extension of benefits. We believe the city council or board of supervisors should make the binding commitment. If a retirement board has substantive power, we urge that in order to prevent a conflict of interest by beneficiaries, no more than one-third of its membership be composed of active or retired members of the pension plan.

Safety Retirement

We believe special attention must be given to the cost of safety retirement. In order to encourage a young average age among police and firemen, enriched pension plans have been created which encourage early retirement. These plans appear to have gone beyond necessity. Safety personnel receive high average salaries. They also receive pensions which are a higher percentage of salary than other employees retiring at the same age. A state patrol member or 1937 Act safety member can receive 75% of salary retiring at age 55 with 30 years service, while a teacher or general worker age 60 with the same period of service will get only 60%. A PERS state or local safety member can retire at age 55 or later with 70% of salary after 35 years, and some 50 PERS contracting local agencies have adopted the 2% at age 50 formula. In large California cities, safety retirees pensions are double--roughly $700 per month--those for other public workers.

Safety retirement costs are escalating at an explosive rate. We believe four steps must be taken to prevent these costs from becoming a fiscal drain which could short-circuit property tax relief as well as deny adequate funding for other public pension plans.

First, expansions of new job classes in the safety member category should be capped and the 2% at age 50 formula should be abolished for new employees. Second, the safety retirement formula should not be liberalized beyond prohibiting 2% at age 55 with 30 years service. Such a benefit at a younger age, or with less service, is prohibitively costly. Third, local governments should pursue development of "career employment" plans enabling some safety personnel to leave hazardous work in their fifties and finish their career with the city or county in a non-strenuous post. This would reduce the rate of artificially early retirements. Finally, public retirement plans should not provide a guaranteed income for persons who want two careers. Safety members who retire to a second job should have an offset, of 50 cents to 75 cents per dollar earned, applied against their safety pensions at least until the age of 60.

Reference

1. Glenn Paschall and John Ellis, Restoring Soundness to California's Public Pension System, a Cal-Tax research bulletin (Sacramento: California Taxpayer's Association, October 1976), pp. vi-viii.

Related Issues

1.00 - Enabling Legislation

1.04 - Contract Ratification by the State Legislature

1.05 - Funding Contract Provisions

2.20 OTHER SIGNIFICANT CONTRACT PROVISIONS AND OMISSIONS

Issue: What other provisions of state-union agreements are important to the correctional administrator?

PRINCIPLES FOR ADMINISTRATIVE ACTION

All provisions discussed under this topic should be recognized by correctional administrators as being unique. Each may be classified into one of three categories: (1) an important item to cover; (2) redundant but otherwise useful; or (3) interesting but not important in a particular state.

In many ways, management-union agreements are a major improvement over the general information on employee rights and benefits previously provided by states. Many agreements, for example, contain excellent presentations of retirement plan benefits. The difficulty with such contracts is that the reader often cannot tell whether the provision applies only to the bargaining unit, to all bargaining units, or to all state employees.

To facilitate understanding, a periodic master agreement book might be developed for each state. Preparation of this material should include a systematic examination of all bargaining units and unrepresented employees in terms of the equity of restricted application of some provisions. When different provision applications have been dealt with, a "super-master" agreement plan could be issued to all employees and to the public.

The unique agreement topics are identified below:

STATE	UNION	TOPIC PROVISION
Illinois	AFSCME	Mandatory leave of absence for Peace or Job Corps.
		Leave of absence for elected office.
		Restriction in seniority shift assignment; seniority may be used to displace no more than 10% of employees on shift requested.
		Restrictions in selecting scheduled days off; seniority applied only to same shift; may be exercised only once per contract year.
		One month's severance pay allowed for employees laid off due to facility closing.
		Starting and quitting times, shifts, and rotation of shifts to be established for each facility by agreement of employer and union local.
		Stewards and union representatives shall not receive preferential treatment for shift or job assignments.
New York	AFSCME	Guaranteed death benefit for employees with 90 days or more service in amount of 3 times annual salary raised to the next multiple of $1,000.

STATE	UNION	TOPIC PROVISION
Oregon	AFSCME et al.	Reimbursement of house-hunting costs in employee relocation. Leave with pay for pre-retirement counseling.
Pennsylvania	AFSCME	The employer shall pay 100% of the costs of life insurance coverage for employees, as well as dental, hospital, and medical insurance for employees and dependents. Jointly-administered "health and welfare" fund established. The directors to determine benefits to be extended; fund to be created by employer contributions of 6¢ per hour per year for all full-time employees. Affirmative action statement: "If any provision of the agreement is in conflict with Federal Executive Orders 11246 and 11375, as amended, and the Civil Rights Act of 1964, and all laws and rules relating to the Commissioner's Affirmative Action program, the provisions of such orders, laws and rules shall prevail." Policy provisions, exceptions to seniority in layoff, extent and means of cooperation in maintaining an affirmative action program in employment, retention and promotion of minority group employees in the state or correctional service.
Wisconsin	AFSCME	The employer shall pay the current value of all sick leaves accumulations to the employee or family at time of retirement or death.

IMPACT

Agreements are dynamic in that they reflect virtually all past benefits conferred on employees, as well as the specific priority concerns of management and employees.

Omissions also are significant. In addition to the universal absence of affirmative action programs in management-union agreements, generally common provisions can be significant by their absence in some contracts. Such provisions are as follows:

1. Recognition or exclusion of multiple appeal routes for employee grievances;
2. Provision for relocation allowances, per diem and travel expenses to employees transferred to another location at management's request;
3. Provision for multiple-unit meetings with management for meet-and-confer and general grievance issues;
4. Provision for time off for union business (It is unusual to find all agreeing to time off, with pay or not, for union business in one article or section. Rather, these items are disbursed among other headings in addition to the heading "Union Business");
5. Provision for legislative enactment or appropriation (While a number of agreements briefly acknowledge that provisions requiring statutory enactment or amendment and appropriation do exist, none indicate how costs will be estimated for provisons with fiscal impact. In the absence of specificity, if the department's budget is not increased to cover all items or provisions, how can anyone determine legislative intent as to which were partially and which were fully funded?).

CHAPTER III

ISSUES INVOLVING UNION ROLE IN STATE CORRECTIONAL ADMINISTRATION

In 1948, E. Wight Bakke observed: "The dominant impression derived from a study of industrial relations in America is that American management would prefer not to deal with unions."[1] The same could be said for public employee unions and American public administrators and political leaders in 1976.

However, further commentary by Bakke also applies today:

> Present-day statements of employers' and employees' associations demonstrate a fairly widespread acceptance of the inevitability of collective bargaining and a decision to develop practical ways of making it a workable process in productive enterprise (or effective government).[2]

Correctional administrators must acquire a realistic understanding of how the collective bargaining process affects their own role in planning, organizing, directing, and controlling the state correctional agency. As in any organization, the goals of management and unions are mostly congruent. Management and workers alike are trying to achieve certain objectives. In type, these objectives are the same; in context, they may be different if the ways of life out of which they arise are different. Managers, according to Bakke,

> . . . are seeking the experience of progress forward, and the assurance of the society and respect of their fellows, economic well-being, . . . control of their own affairs, an understanding of the forces which affect them,

> integrity within themselves and with respect to their relationship to the world and people about them. Success or failure in the achievement of these goals is worked out in the societal environment shaped by the several economic, familial, political, religious, and other social institutions of which they are a part and the groups of which they are members. . . .[3]

The "ways of life," as Bakke uses this term,of management and labor in private enterprise are remarkably dissimilar. In contrast, public sector management and employees have experienced similar conditions and styles of living. In public service, and especially in corrections, management and employees tend to come from and currently have a life style of the middle class. In addition, correctional managers often have risen from the ranks of correctional workers. The correctional manager seeks approval from those who are now his organizational subordinates, as well as from his peers and superiors in the administrative hierarchy of government. He also gains from benefits the employee unions have negotiated--especially in terms of pension, fringe benefits, and general salary increases. Thus, it would seem that management and labor in corrections would get along relatively well under collective bargaining.

However, the character of the relationship between the correctional administrator and employee unions is determined almost exclusively by their respective roles. The administrator's role is determined by his responsibility for the organization as a whole, for the welfare of inmates as well as staff, his broader professional view of corrections as a part of the criminal justice system, and his commitment to administrative policies and political priorities of the executive branch of state government. Accordingly, the administrator's roles include the following:

1. Planner and initiator of correctional policies and programs within the framework of the criminal justice system;
2. Leader and organizer, the "coach" of the team, as well as a member of the governor's team;
3. Trustee or steward of the public funds appropriated for correctional services;
4. Benefactor in creating and developing "good conditions" for both employees and prisoners.

The employee union official also has acquired a broader responsibility, since he holds office to provide leadership of fellow employees in the bargaining unit in pursuit of their collective interests. Employee loyalty shifts to some extent from the administrator and the organization to union leaders. The objectives of employees are more limited than those of the correctional manager, but, to the extent they are achieved, they impinge on some of the roles and objectives of management. For example, if funds which the administrator requires for a new correctional rehabilitation program are denied because of the new costs of employee benefits, the administrator loses some legitimacy as a leader as well as the approval of his employees. The union's power to impose political costs on the administration can be used, if needed, without hesitation. Such power, similar to the executive's powers to reward and punish subordinates, is rarely used but its availability is always recognized by the parties involved.

Early in the establishment of collective bargaining in the public agency, union leaders' interests in achieving their goals seem to require that the corrections administrator be weakened in terms of as many of his four roles as possible.* This is necessary if unions are to win broad public and political acceptance of the bargaining process as well as the approval of improved employee benefits and working conditions, since such changes almost invariably diminish the administrator's powers. The correctional administrator's leadership role is reduced to leadership of management staff, prisoners, and his correctional peers outside the state organization. The desired result of this power realignment is to establish that there are two equal interests in departmental administration--that which is expressed by management and that which is expressed by the union(s). (A third interest, yet to be recognized, is that of the prisoners.)

When these two political powers have become nearly equal, the administrator seems to be much more vulnerable in confrontation. The administrator's powers and his personal security are diminished as the union's security and political powers are increased. Whenever these two forces collide, the governor and other political leaders have little choice regarding whom they will support since the political costs of replacing the corrections administrator are nominal compared to the alternatives. A replacement may be desirable, from the union's perspective, simply to make known the risks for any administrator or manager who is zealously pro-management or "anti-union" or who does not accept union co-management of the agency or institution.

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*It has been observed often in private enterprise that union pressure for a larger share of the work product has forced management to improve organization efficiency. In the public service this has not been so clearly demonstrated.

The union's risks also are minimized by management rights statements in legislation and the union contract. As unions acquire political powers and security, management may be left with few areas of independent decision making, but with all of the accountability for unsatisfactory results of decisions made. However, unions never take too much power, since management is weak and ineffective if it gives up something it requires to function.

In allocating limited funds available for correctional services, the prison manager must try to make wise choices. He must be concerned primarily with prisoner care and allocate new expenditures accordingly. He is also the instrument for implementing the governor's policy in equal opportunity and affirmative action in employment practice and should seek to do so with the least effect on existing prison employees. However, he cannot value employee security so highly that he jeopardizes prisoner safety or well-being. While an employee strike or job action should not be perceived as a personal attack on the administrator himself, employee actions intended to inconvenience the prison are something the prison manager must attempt to overcome. He must seek to minimize the inconvenience because it is a strike or action against the prisoners, whatever else it may be called.

This chapter is concerned with the points in collective bargaining at which correctional and general state administration comes most in conflict with employee unions, beginning with the most dramatic events--employee strikes and job actions.

References

1. E. Wight Bakke and Clark Kerr, Unions, Management and the Public (New York: Harcourt, Brace and Co., 1948), p. 241.

2. *Ibid*. (parentheses added)

3. *Ibid*., p. 242.

3.00 EMERGENCY PLANS RELATED TO STRIKES AND JOB ACTIONS

Issue: Since adoption of collective bargaining seems to have had little effect on the frequency and scope of employee strikes and job actions, what can the administrator do to reduce or control such incidents?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Departmental and institutional emergency plans for employee strikes and the typical job actions should be fully developed prior to the time when such actions are anticipated.

In light of past experience with employee strikes in various states, these emergency plans should include the following provisions:

1. Identification of management staff who will be expected to respond to work, a plan for their assignment, training for such assignments if necessary, and provisions for their 24-hour attendance on the job (indicates sleeping, bathing, meal and laundry service).
2. Determination of the extent to which inmates may be released from their cells to perform institutional operation jobs.
3. Determination of the extent to which inmates will observe the normal institutional schedule for work, school, training, and recreation, etc., under various strike and response options.
4. Identification of the sources of external assistance and how they may be used (e.g., state police for perimeter tower gates and outside grounds security post assignments, and special posts needed to assure ingress and egress). The use of state police to provide unrestricted access to and from the prison is most desirable (and, conversely, union cooperation to restrict picketing to informational picketing only, and the maximum number of pickets to be allowed on the site and its access roads). Other essential services which could be similarly covered by outside help are the fire station, the boiler house, and the hospital and warehouse operations.

5. Determination of the extent to which confidential and unorganized workers (e.g., clerks and switchboard operators) can be expected to work during an employee strike.

6. Review of assumptions which can be made about sympathy for the strike on the part of other prison and outside unions, including telephone employees and supply truck drivers.

7. Inventory of minimum requirements for food and medical supplies, water, etc., in the event of a period of total isolation. Establishment of a plan for emergency replacements, repairs, and new supplies.

8. Establishment of a local authority for emergency purchase and expenditure authorizations.

9. Determination of the extent to which state of emergency proclamation or executive order is desirable and who should issue it.

10. Determination of the essential specialized positions which must be filled or, as the need arises, for which emergency replacement can be obtained. Discussions with union local officers are necessary regarding immunity of selected employees from adverse union feeling if they report to work at management's request for an emergency need by inmates or staff. Discussions may also extend to which nonunion, nonstate employees (e.g., local electrician, plumber, physician, dentist or nurse) may be allowed to pass through the picket line without demonstration or overt resentment.

11. Determination of the form, procedure, and communications lines for requesting court injunction against illegal strike or job actions.

12. Review of the emergency operation plan with the director and staff of the state office of employee relations.

13. Identification of an institutional spokesman for the superintendent to deal with all media inquiries concerning the strike and its impact on the institution(s).

14. Determination of a plan to keep inmates informed and, as necessary, to advise their families and friends about the inmates' well-being, possible changes in visiting schedules, etc.

15. Determination of a plan for holding or postponing parole board hearings during the strike or job action.

Pertinent National Standards and Goals

Standard 13.4, Work Stoppages and Job Actions, is quoted below:

> Correctional administrators should immediately make preparations to be able to deal with any concerted work stoppage or job action by correctional employees. Such planning should have the principles outlined in Standard 13.3 as its primary components. In addition, further steps may be necessary to insure that the public, other correctional staff, or inmates are not endangered or denied necessary services because of a work stoppage.
>
> 1. Every State should enact legislation by 1978 that specifically prohibits correctional employees from participating in any concerted work stoppage or job action.
> 2. Every correctional agency should establish formal written policy prohibiting employees from engaging in any concerted work stoppage. Such policy should specify the alternatives available to employees for resolving grievances. It should delineate internal disciplinary actions that may result from participation in concerted work stoppages.
> 3. Every correctional agency should develop a plan which will provide for continuing correctional operations in the event of a concerted employee work stoppage.[4]

Background of the Problem and Experience of Other Agencies

Although correctional employee lobbying, publicity techniques, and legal actions significantly affect the operation of state correctional facilities, they are, for the most part, legitimate and legal avenues for the attainment of employee organization goals. This is not the case with correctional employee strikes and related job actions such as sick-outs, lock-ins, or slowdowns. In no state in the country except Hawaii are correctional officers granted the right to engage in strike activities. Correctional employees, other than correctional officers, may or may not be prohibited from striking depending upon the jurisdiction and the specific circumstances.

Employee Strikes in Corrections

Even though prohibited from striking, correctional officers have gone out on strikes or engaged in job actions in approximately half of the states researched. Numerous job actions have occurred in the 1970s in the states of Ohio, New Jersey, Massachusetts, Rhode Island, New York, and Pennsylvania. Ohio has experienced the most correctional employee strikes and job actions. Strikes or sick-outs (and sometimes both) have occurred every year in that state from 1971 through 1975.

In 1975 alone, a system-wide strike occurred in Ohio; Pennsylvania had two correctional employee strikes--one involving only the Western Pennsylvania Correctional Institution and the other extending to all of the state's correctional facilities; New York State correctional officers struck the Fishkill Correctional Facility: New York City correctional officers engaged in a strike at Riker's Island; and strikes were threatened in Rhode Island, New Jersey, and Michigan.

Although most correctional employee strikes last for only a few days, some have continued for over three weeks before the employees returned to work. Of the correctional officer strikes which occurred in 1975, only one--in Ohio in May 1975--lasted longer than one week. This strike, which involved employee organization representation rights, lasted seventeen days.[5]

Whether it is a strike, a sick-out, or a similar job action, departments of correction usually attempt to get an injunction against the striking organization and employees. Such injunctions have mixed results. Often, by the time an injunction has been secured, striking employees, feeling they have made their point, are ready to return to work. In other instances, employees may stay off the job despite an injunction. Such a situation occurred during a 1975 strike in Pennsylvania, where striking correctional officers stayed off the job for four days in defiance of a court order even though the state council of their union had asked striking employees to return to their jobs.[6]

Strike Penalties to Unions and Employees

Penalties attached to violation of court injunctions against strikes may include fines for the employee organization and jail terms for its leadership. In addition, public employee relations commissions in states such as New York are beginning to apply penalties such as loss of dues check-off to employee organizations fround to be in an illegal or unfair practice. Although there seems to be some increase in the use of sanctions against striking employees and their organizations, in most cases in the 1970s, only minor disciplinary actions have been imposed. For example, the penalty imposed on striking employees in Pennsylvania in 1975 was a one- or two-day suspension.[7]

Some departments of correction have fired striking employees. In 1975, 150 striking correctional officers at the Brushy Mountain State Prison in Tennessee were fired after refusing to return to work.[8] In 1973, the commissioner of the Massachusetts Department of Correction fired striking correctional officers at the Walpole State Prison. However, the firings were overturned by the governor after the president of AFSCME Council 21, which represented correctional officers, threatened to take all state employees out on strike and asserted: "If they fire one employee, there will be a new day in Massachusetts for public employees."[9] In 1975, the Ohio Personnel Board of Review upheld the firing of 30 of the 123 correctional officers fired by the Department of Rehabilitation and Correction for participating in a May 1975 strike. This was the first time any striking correctional officers in Ohio were fired for strike activities even though numerous strikes have occurred during the 1970s.[10]

Sick-outs

While the strike is a rather straightforward job action, there are other more subtle job actions sometimes used by correctional personnel. The sick-out is one such job action. In a sick-out, correctional employees allege they are ill and stay home from work. Usually in such situations, a department of correction must take action to prove that individual employees were not, in fact, sick in order to institute disciplinary action.

Although there seems to be a fine line between publicly announced strikes and sick-outs, the sick-out generally is perceived as a lesser job action than a strike and potentially carries less severe legal sanctions. For example, in New Jersey in 1976, the union representing correctional officers initially decided to call a strike for their pay demands, but instead reduced the protest to a job action of employees calling in sick or taking vacation in order to minimize the possible legal actions against, and loss of pay to, striking employees.[11]

In the sixteen states researched for the MERIC project, the primary disciplinary action taken against correctional officers engaging in a sick-out was to individually discipline officers not able to provide a doctor's certificate of illness. Generally, where a doctor's certificate indicating illness or a visit to a physician is provided, the employee receives pay for the sick day taken and is not subject to other formal disciplinary action.

For a short-term job action, the sick-out is an effective employee tactic. Employees with verification of a doctor's visit usually are not disciplined; the sick-out is a less direct confrontation with antistrike provisions of state statutes and, thus, it is more difficult to take legal action against individual workers or the employee organization; and sick-outs can be used as a more subtle form of job action in which small numbers of employees can call in sick in order to achieve a minor operational disruption. (In some police departments the sick-out already has been described in the vernacular at the "Blue Flu.")

Lock-ins

Another type of job action is the lock-in, in which correctional officers, after assuming their posts in the cell blocks, refuse to let the prisoners out of their cells. Often citing dangerous working conditions as the reason for the lock-in, correctional officers use this tactic to put pressure on the institutional administrator to agree to their demands. A lock-in increases the tension between custodial and prisoner groups and contributes to the volatile atmosphere within the institutional setting. Clearly, a job action such as this not only puts pressure on institutional management, but is also a collective act against the prisoners by the prison guard force. This might well be regarded by management as a reckless and irresponsible act. It is exceedingly important to recognize that job actions by correctional personnel have a direct impact on inmates. In reports by the public media on job actions by correctional personnel, the impact on inmates frequently is overlooked.

Slowdowns and Speedups

In addition to lock-ins, there are a variety of slowdown actions available to correctional personnel. In private industry, a slowdown occurs when workers decrease the rate at which they complete their assigned production jobs. Sometimes it may be "working by the rules"--by every rule, safety order, and discretion option known. In correctional institutions, slowdowns frequently are more complex. For example, one slowdown technique is for correctional officers to purposely hold up completion of the inmate count in order to earn overtime pay for time worked past the shift deadline.

There are, of course, many ways to slow down the movement and activities of inmates. For example, correctional officers can slow down the notification of prisoners of visits, distribution of mail, or the processing of inmates going out on community furlough or work release. Correctional officers also can either decrease or increase the number of citations against inmates for infractions of institutional rules. For example, in Massachusetts in 1973, correctional officers, outraged over new inmate disciplinary procedures which included procedures by which inmates could call officers as witnesses, reduced the number of formal disciplinary actions against inmates and chose to deal with infractions through more informal methods. Likewise, speedups can occur in the writing of disciplinary offense reports in an attempt to agitate the inmate population and force correctional management to accede to employee organization demands in order to avoid an inmate work stoppage or riot.

Flooding the Grievance Appeal System

Another form of job action available to correctional employees is the flooding of employee grievance and disciplinary appeal procedures. This particular action has the effect of holding up the appeal process, increasing the number of men who must be away from their positions to attend hearings, and substantially increasing the amount of administrative time spent on hearing appeals to disciplinary and grievance actions.

Job Actions over Economic Matters

During the early stages of correctional employee labor relations in the late 1960s, economic issues were of singular importance in the precipitation of correctional employee activism and job actions. Most notably, in New Jersey, Rhode Island, and Ohio in 1968 and 1969, several job actions occurred over issues which were primarily economic. In New Jersey in 1968, correctional officers engaged in a sick-out over salaries. The correctional officers' demand for an annual salary of $10,058 after three years of service would have resulted in a $2,200 annual increase over the existing salary level of $7,886.[12] In Rhode Island in 1969, correctional officers voted to postpone a strike, but rejected the state's offer of a weekly pay increase of $10. Starting salaries for correctional officers in Rhode Island were $95 a week ($4,940 annually). The correctional officers' union, AFSCME Local 114, was pushing for a salary increase of $20 per week and the implementation of a retirement plan which was currently before the state's general assembly.[13] In Ohio, correctional officers at the state penitentiary engaged in a strike for a salary increase of $1,500 annually. Starting salaries for correctional employees were $5,240 a year at the Ohio Penitentiary and $4,900 a year at the other state institutions.[14]

It is not surprising that the earliest job actions of correctional employee organizations were designed to achieve increased wages. Traditionally, economic benefits have been a primary focus of employee organizations. In addition, correctional employees were suffering from exceedingly low pay scales in most jurisdictions. In 1969, a final report of the Joint Commission on Correctional Manpower and Training indicated the following:

> . . . The salaries of correctional employees provide an index to the retarded development of personnel policies in corrections. Position by position, salaries in this field are generally lower than those in the private sector or in other governmental occupations requiring comparable educational preparation and job responsibilities.[15]

Compared to employees in law enforcement and other criminal justice professions, correctional workers were underpaid in the 1960s and they continue to be so. This pay differential has been a primary factor in the organization and activism of correctional employees and in the prevalence of correctional employee job actions over economic issues. A search for greater economic benefits, however, is not the only reason for increasing strikes by correctional employees. (See Issue 2.00, Salaries.)

Job Actions over Labor Relations Rules and Regulations

Correctional employee organization job actions have resulted from disputes over the legal framework of state employee labor relations. Most notably, a strike in Ohio in 1975 occurred when the Department of Rehabilitation and Correction announced that it would negotiate new contracts only with unions which could prove they represented 30 percent of the department's employees.[16] In Ohio at this time, five separate unions and associations represented employees at each correctional facility. For example, the guards at the Southern Ohio Correctional Facility at Lucasville were represented by the International Brotherhood of Correctional Officers, the Ohio Civil Service Employees Association, the

Communications Workers of America, AFSCME, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America. Many employees were members of more than one of these employee organizations.

The Ohio Department of Rehabilitation and Correction's new ruling with respect to contract negotiations would have made it impossible for more than three employee organizations to represent correctional personnel. This decision by the executive branch of government to restructure the labor relations rules and regulations with respect to employee organizations certification for bargaining was perceived by the employee organizations as an attempt to develop a more advantageous labor relations environment for the administration and to weaken several of the employee organizations.

Such administrative manipulation clearly is possible in jurisdictions such as Ohio which do not have comprehensive collective bargaining legislation. However, even in states such as New York, where comprehensive collective bargaining legislation has been in effect for several years, the potential exists for administrative changes in collective bargaining procedures. For example, New York State officials publicly discussed the possibility of suspending economic negotiations during the 1975 collective bargaining sessions due to the fiscal crisis in the state. Employee organization officials responded that such actions by the state would result in a state employees' strike in spite of the strict strike prohibitions of New York State's collective bargaining legislation.

Negotiations continued. No strike occurred. The new contracts did not provide for a wage increase in the first year, but guaranteed a raise in the second year under a reopener clause.[17]

Interorganization Competition

A third factor contributing to correctional employee job actions is competition among employee organizations. Such job actions most often occur in states such as Ohio which have not developed exclusive representation rules for collective bargaining units. For example, two short strikes occurred at the new Southern Ohio Correctional Facility in Lucasville in 1973.[18] At issue was the question of whether the department would honor seniority provisions relating to transfer of staff to the new facility which had been agreed to with AFSCME or those which had been negotiated with the Teamsters, Local 413. The Teamsters argued that they had been promised institutional seniority based on length of employment at the new Southern Ohio Correctional Facility, whereas AFSCME indicated that they had been assured of the use of departmental seniority at the new facility.

Seniority became an issue at the new institution because the first officers transferred were from the old Ohio State Penitentiary where employees were primarily represented by the Teamsters. The Teamsters, therefore, argued tnat seniority at the new Lucasville facility should be institutional seniority based upon the time of first employment at that facility. AFSCME, representing all other employees (who, for the most part, were transferred later than those represented by the Teamsters), was attempting to gain a departmental seniority provision for appointments within the new facility which would best protect the interests of its members.

In Ohio, the two employee organizations represented the same class of employees, i.e., correctional officers. Interorganization conflict also occurs among organizations representing different classifications of prison employees. In Pennsylvania, AFSCME, which represented most classes of personnel within the state's correctional facilities, and the Pennsylvania Social Services Union--SEIU--which represented certain program staff within the institutions, both struck in June 1975 over stalled contract negotiations.[19] AFSCME stayed on strike for only three days; the Pennsylvania Social Services Union stayed out for three weeks. Although the reasons for this difference are complex, one of the factors behind PSSU's holdout in the face of court injunctions was interorganization competition with AFSCME in Pennsylvania.

Job Actions Over "Safety and Security"

Aside from job actions over economic matters, the most prevalent cause of correctional employee work stoppages is concern over employee safety and institutional security. For example, in October 1973, under the pressure of a strike deadline, officials of the Michigan State Department of Corrections agreed to five employee "safety and security" demands. They included: (1) a pledge to hire 30 additional employees immediately at one of the correctional facilities; (2) the transfer of difficult prisoners to a new intensive program center; (3) an end to such procedures as unsupervised inmate work details; (4) the appointment of a second woman corrections officer to search women visitors for contraband; and (5) the speedier prosecution of inmates who commit felonies against employees. The negotiations and the strike threat by correctional officers were triggered by the slaying of a guard by an inmate at the Marquette institution.[20]

In 1974, guards at the adult correctional institution in Rhode Island struck over employee safety and institutional security provisions. The strike began after a prisoner allegedly fought with one of the guards and was confined to his cell pending a disciplinary board hearing. Guards contended that this violated a policy which called for placing such prisoners in a segregation unit for 30 days. State police and national guardsmen were sent to the institution when the guards refused to report for work.[21]

In May 1975, correctional officers at the Western Pennsylvania Correctional Institution engaged in a sick-out protesting the closing of the prison's behavioral adjustment unit which housed "incorrigible" inmates. The correctional officers indicated that closing the adjustment unit would increase the danger to correctional officers and reduce security within the institution.[22]

In September 1973 in New Jersey, a two-day sick-out over security at Leesburg State Prison was settled when the correctional administration agreed to four major demands of the correctional officers:

(1) the installation of metal detectors; (2) police radios for prison guards; (3) more guards at the institution; and (4) increased internal security.[23]

In March 1973 in Massachusetts, correctional officers at the maximum-security state prison in Walpole complied with a court order ending a five-day strike over reform policies instituted by the commissioner of correction. One of the incidents leading to the correctional officer protest was the commissioner's order that some "twenty prisoners in the maximum security section be released into the general prison population." The correctional officers contended that this action would result in an increase in the volatile atmosphere within the institution and in greater danger to correctional officers.[24]

It is important to recognize that strike activities by correctional personnel over issues of "safety and security" often are linked to other employee concerns. Institutional personnel in the 1970s have become increasingly concerned over: (1) the increased rights of prisoners in terms of due process procedures, institutional movement, and educational and treatment programs; and (2) the potential reduction in institutional jobs due to the development of community programs and the cutbacks necessitated by the governmental fiscal crisis. Increased inmate rights and the potential for a reduction in correctional officer positions has increased correctional officer discontent which is frequently expressed as dissatisfaction over "safety and security."

Although there is no solid evidence to suggest that assaults on correctional personnel have increased significantly as a result of these operational changes, it is certainly true that correctional officers perceive an increase in the potential for such attacks. Previously, inmates were locked in their cells most of the time except for specified activity periods. Today, however, in most of the nation's institutions, inmates can move freely within their cell block areas and with an escort or pass to other parts of the institution during the day and early evening. For correctional officers, the threat of physical danger has increased. Their response has been to demand more severe punishment and longer segregation for troublemakers and increased staffing within the cell blocks and additional security devices. In some cases, these conditions lead to demands for hazardous duty pay increases, as occurred at Indiana's maximum-security prison in Michigan City. At that facility, the correctional officers of the maximum-security cell block walked out and briefly picketed for a special pay increase for such hazardous assignments.

Increased staffing and pay, however, are very expensive and questionable solutions to employee safety concerns. The addition or one or two officers to a cell block containing 100 to 400 inmates does not significantly change the odds or reduce the potential for physical attack. It does, however, act in a psychological manner to reduce correctional officer anxiety.

A correctional officer's murder almost invariably draws demands by the correctional officers' association or union--often presented through some form of "job action." On the other hand, the murder of nonsecurity personnel has never resulted in any visible form of organizational protest. Correctional counselors, prison industry factory foremen, librarians, recreation supervisors, and teachers might learn from the example of the correctional officers' unions and in the future demand and get higher pay, early retirement, additional guard coverage in their work area, and more restrictions on the custody classifications of prisoners with whom they work. If the past is any guide, however, this will have no effect on the murder rate of personnel.

It is interesting to note that, in comparison, more than three times as many employees will die each year in avoidable automobile accidents occurring in the commuting drive to work.[25]

In most states, as a deterrent to staff murder by prisoners, the death penalty was made mandatory. However, this apparently has made no difference in the murder rate or in the number of prisoners prosecuted or convicted of such murders. Because the numbers are so few, the states make little effort to collect statistical data on a year-to-year basis. It would be desirable to establish a national statistical center which would accumulate and analyze such data on a long-term basis. The benefit of this would be simply to counteract the emotional and sometimes irrational responses of correctional unions to such incidents.

A major problem with correctional officer demands for increased staffing is that a significant effect on correctional officer safety would require financial resources so great that it is unlikely they would be recommended by the executive branch or approved by the legislature. Employee organization job actions for increased staffing represent an attempt to incrementally raise the level of institutional staffing by coercing either the transfer of scarce resources from other correctional program areas or an overall increase in the correction department's budget.

Other employee demands relating to "safety and security" call for the purchase of such devices as metal detectors and walkie-talkies or for structural improvements within the institution. Correctional administrators frequently are in agreement with such "safety and security" demands. The problem is one of priorities. Capital outlays for equipment or improvements must be included within the department's annual, or sometimes biennial, budgetary request and must be approved and funded by the state's legislative bodies. As such, strikes and other job actions by correctional personnel for equipment and renovations are as much attempts to apply pressure on legislative bodies as they are activities against unresponsive management.

"Safety and security" demands are most problematic when utilized by correctional organizations to influence correctional policies or to retaliate against perceived inmate excesses. Correctional employee organizations have found the public and politicians receptive to their concerns for more "safety and security" and less "permissiveness" with the prisoners, and more "punishment" rather than activities that "make the prison a country club." In many cases, however, the symbolism projected by "safety and security" concerns does not represent either the environmental reality or the covert agenda of the employees.

Often, as has occurred in Massachusetts, Rhode Island, Ohio, and Pennsylvania, employee organization lobbying, public statements, lawsuits, and job actions relating to "safety and security" issues are attempts to halt progressive correctional policies such as community corrections and deinstitutionalization and to reestablish a state correctional system emphasizing an institutional and custodial orientation. Another aspect of this agenda is revealed by union advocacy for longer prison terms and more stringent parole policies, such as increase in minimum time served before eligibility to be considered for parole. As pointed out previously, contract negotiations most often exclude such matters of policy from consideration. Thus, correctional employee organizations attempt to influence these cases through methods external to the bargaining table.

Job Actions over Other Operational and Policy Issues

There are many other operational and policy issues which have either precipitated job actions by correctional employees or which have been components of a demand package. For example, in March 1972, striking correctional officers at the Ohio Penitentiary listed the following demands: (1) retirement after twenty years at a higher pension; (2) state responsibility for legal actions growing out of inmate suits against guards; (3) more pay for hazardous duty;

(4) a better sick leave program; (5) abolition of an inmate council conceded to prisoners; (6) outside trials for inmates charged with felonies while in prison; and (7) standardization of penalties imposed by the institution's inmate disciplinary board.[26]

In July 1972, 150 striking correctional officers at Tennessee's Brushy Mountain State Prison were fired after refusing to return to work following the discipline of two correctional officers. The guards walked off the job to protest the firing of one guard for allegedly verbally abusing the prison warden.[27]

In April 1974, correctional officers at the Ohio State Reformatory in Mansfield struck for four days to obtain: (1) a shorter workweek; (2) tuition for additional schooling; (3) seniority rights; and (4) uniform allowances. The strike reportedly arose "after a citizens' prison advisory committee read a list of inmate complaints against guards, including alleged brutality."[28]

There are a wide range of issues which may precipitate correctional employee job actions. Although strikes over labor relations frameworks and interorganization competition do occur, they cannot be considered primary causal factors in most correctional employee job actions during the late 1960s and the 1970s. Economic and "safety and security" issues appear to be the primary motivations for correctional employee job actions. As pointed out, the "safety and security" issue is most complex and laden with covert motivations and emotional content.

IMPACT

Unlike most government employee strikes which directly affect the public (such as strikes by police, fire and transit workers), the impact of correctional employee strikes generally is hidden from public view. Although correctional management is inconvenienced by employee strikes, and the safety of the public and of other correctional workers is somewhat reduced, the primary impact of a correctional employee strike is felt by the prisoners.

During a correctional employee strike, administrators have the option of keeping inmates locked in their cells* and relying on nonunion supervisory staff and selected prisoners to continue vital institutional services such as power plant operation, food preparation, purchasing, deliveries, medical treatment, and internal security. Where manpower is significantly reduced, the state police, state highway patrol, or national guard may be called in to man perimeter towers, to patrol the grounds of the institution, and even to perform custodial jobs within the cell blocks. In many states, correctional administrators have the legal power to hold over a shift of employees for as long as necessary during a state of emergency. A declaration of a state of emergency at the beginning of a correctional employee strike can result in the retention of significant numbers of correctional officers who, if allowed to leave the institutional grounds, would also be participants in the strike activities.

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*Note: The option may be oversimplified. Many prisons have cells with two to six prisoners, and there are substantial numbers in dormitory housing, some with wall-to-wall cots or "double-decked" (bunk beds).

Clearly, with inmates locked in their cells for the duration of a correctional employee job action, an institution can operate with only a minimum of personnel. However, correctional administrators today are not likely to institute a lock-and-feed operation during employee strikes. Although institutional activities and programs necessarily are reduced during employee strikes, for several reasons many correctional administrators attempt to keep inmate activities as normal as possible during the strike period. First, administrators are reluctant to impose on prisoners what might be considered a punitive sanction as a result of actions by correctional employees. Second, administrators generally attempt to reduce the potential for increased tensions between inmates and employee groups as a result of employee strike activities. Third, administrators are responsive to public pressures for "fair and humane" treatment of offenders during an employee strike.

Correctional administrators have adopted several methods of institutional operation during an employee strike. Some have held steadfast to lock-and-feed procedures; others initially have locked inmates in their cells and progressively released selected inmates for limited activities; still others have attempted to retain as normal an institutional atmosphere as possible. A unique situation developed in Massachusetts during a correctional officer strike at the state prison in 1973.[29] Supervisory staff from the Department of Correction carried out the normal control and operational functions within the institution such as inmate supervision, internal security, and supervision of food, recreation, and maintenance activities.

In addition, inmate leaders assumed responsibility for keeping order within an inmate population which was allowed as much freedom of movement and normality of activity as possible. Volunteers from the general public were allowed into the institution to monitor internal operations and to assist in providing for inmate needs. While there were conflicting reports about the effectiveness of the Massachusetts experiment, no inmate riot or significantly destructive activity occurred during this lengthy correctional officer strike. In fact, throughout the nation, inmates generally have behaved well during correctional officer strikes, perhaps in an attempt to prove that they can get by without guards, or perhaps in sympathy with any action against the establishment.

In deciding how inmates will be handled during a correctional employee strike, the correctional administrator must balance the fair treatment of inmates, the security and safety of inmates, staff, and the general public, as well as the need for an orderly return to normalcy after the strike has ended. One administrative action, however, clearly is required. Operational plans should be developed well in advance of a potential strike and supervisory personnel should be trained in strike procedures.

Whatever the administrative decision regarding institutional activities during a strike, the impact on outside activities of inmates is immense. Inmates required in court to stand trial or to act as witnesses frequently cannot be transferred, and court cases are forced to be rescheduled or to proceed without a particular inmate witness. Inmates on educational or work release are required to miss classes or to be absent from their jobs, and inmates requiring specialized medical care frequently are unable to be transferred. Also, community furlough programs for inmates may be terminated during job actions.

Also of major concern to the correctional administrator during an employee strike are activities disruptive of institutional operations. For example, during a correctional officer strike in Ohio in 1975, pickets stopped delivery trucks from entering the institutions and the department had to use national guard helicopters to bring in necessary supplies. Telephone lines to the Southern Ohio Correctional Facility were cut, severely limiting the ability of institutional management to communicate with central office and working employees to communiate with their families. The lines were not repaired until after the strike since the telephone repairmen--members of the Communications Workers of America--would not cross correctional employee picket lines. In addition, some of the pickets interfered with supervisory personnel entering the institution by threats and some violence which led to criminal charges.[30]

In contrast to the usual strike situation, those affected most by correctional employees' strikes cannot significantly influence the outcome. In most public sector strikes, public outrage over the inconvenience resulting from the strike acts to encourage settlement. In correctional employee strikes, prison inmates, with virtually no constituency, must suffer the effects of a job action without any power to influence its outcome.

Correctional management also may have no real power to influence the outcome of many correctional employee strikes. This is particularly true with regard to strikes over economic benefits. Economic benefits, which are recommended by the executive and approved by the legislative branches of state government, usually are not within the administrative jurisdiction of the correctional administrator. The correctional administrator often is faced with operating a system during a job action in which employees in effect are striking not the department, but the governor and the legislature.

Referring to a 1974 strike in Ohio, a correctional administrator in that state commented: "It is very frustrating to deal with a strike about an issue over which the department has no control." The inability of departments of correction to respond to many correctional employee job actions is important. Often, the correctional administrator must operate the institutions under emergency conditions in such a way as to facilitate a return to normal conditions after a settlement has been entered into between the employee organization and the state's chief executive.

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26. *GERR*, No. 446 (3 April 1972), p. B-17.

27. *GERR*, No. 464 (7 August 1972), p. B-12.

28. *GERR*, No. 552 (29 April 1974), p. B-19.

29. *GERR*, No. 496 (26 March 1973), p. B-18.

30 *GERR*, No. 609 (9 June 1975), p. B-17.

*Note: Pages 344-361 are taken from the MERIC final report, *Prison Employee Unionism: Its Impact on Correctional Administration and Programs,* by John M. Wynne, Jr.

Related Issues

This issue cuts across almost all issues. While anti-strike requirements are fundamental to enabling legislation (Issue 1.00), this seems to have less significance (because of lack of enforcement) than the organization for employee relations (Issue 1.12) or how to deal with union political activism (Issue 1.14).

3.01 UNION SECURITY

Issue: How is union security provided for and can management derive some benefit from it? Is management better off with or without union security?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Union security is provided for by:

1. Formal recognition of the union as the exclusive bargaining agent for a group of employees;
2. One- or multi-year contracts or agreements with the state to represent the bargaining unit for the services, benefits, and rights stipulated in the contract;
3. Authorization of members' dues deduction from payroll;
4. Agency shop or "fair share" provisions where nonunion members of a bargaining unit are required to make monthly payments to the union in lieu of initiation fees and dues.

The "security" of the union derived from such provisions is not only a benefit to the union, but it also is cited frequently as an advantage to the employee. Secure unions will be more responsible, it is claimed, than those which are fighting off competition for bargaining unit representation. Experience to date neither clearly supports nor refutes this contention. Representational struggles have been in the background of all Ohio's correctional union strikes and job actions. Yet strikes and job actions have been almost as common in states where union security was established some years ago.

Employee unions never are really "secure" and they do not act as if they are; they must constantly prove their worth to their members.

In all but a few states, the right to negotiate agreements requiring employees to join or pay a service fee to a union has been denied in the public sector. Most state laws give public employees the right to not join a union, which would appear to make union shop agreements illegal; and a few states have laws specifically prohibiting union or agency shops. Hawaii and Rhode Island laws mandate agency shops in state-employee organization agreements. Wisconsin, New Hampshire, and Massachusetts laws permit agency shops to be negotiated.[1]

It has been pointed out that:

> In view of the restrictions in most states, it is surprising to find that various forms of union security have been negotiated in a substantial number of contracts between unions and government employers. . . . almost one-third of the state and local agreements included in a 1968 survey contained closed, union, or agency shop provisions, the first type being illegal even in the private sector. An additional 13% contained such lesser forms of union security as maintenance of membership or preferential hiring clauses. Some form of union security was included in two-thirds of the Teamster agreements, half of the AFSCME contracts, and one-third of the SEIU and Laborers agreements. . . .[2]

IMPACT

Union security provisions are not ordinarily a matter with which corrections administrators will be concerned, and this area seems to have little impact on the problems which unionism can bring to corrections. As indicated, such provisions--while desirable--are not sufficient in themselves to produce a "secure union." The union must still act to expand its political power which is essential to negotiating substantial benefit gains in each contract renewal, and it must continuously resist job eliminations and promote the creation of new jobs.

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1. Jack Stieber, Public Employee Unionism: Structure, Growth, Policy (Washington, D.C.: Brookings Institution, 1973), p. 127.

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Related Issues

1.00 - Enabling Legislation

1.01 - Bargaining Unit Determination

3.02 CONDITIONS OF WORK AND EMPLOYEE SAFETY

Issue: Can the typical contract provision on employee safety apply to prison operations? If so, does it raise the possibility of marginal expenditures and related operating policies seeking to achieve an unrealistic goal?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Application of General Standards

The corrections administrator must expect to bargain in good faith on the issue of employee safety. This may include basic human needs such as adequate air and light, work space, rest periods, and facilities for personal hygiene. Heat for guard tower posts, for example, may not have been provided in the original prison construction, but it is reasonable--if not too expensive--to add today in temperate climate areas. It is not unusual for negotiations to be deeply involved in setting priorities for improvements, where the need for guard tower heat may be compared to the need for a lavatory of an employee locker room and shower. These priorities also may be related to many others in the capital improvements budget where not only are employee needs competing with prisoner needs, but the needs of the department of corrections as a whole may be competing with those of all other departments for a larger share of the state budget.

The language of the contract provision typically goes much further than the items discussed above, as a look at the Wisconsin-AFSCME agreement provision will illustrate:

Health and Safety

Section 1 - First Aid Equipment

It is the expressed policy of the Employer and the Union to cooperate in an effort to solve health and safety problems. Adequate first aid equipment shall be provided at appropriate locations.

Section 2 - Tools and Equipment

The Employer agrees to furnish and maintain in safe working condition all tools and equipment required to carry out the duties of each position. Employees are responsible for reporting any unsafe condition or practice and for properly using and caring for the tools and equipment furnished by the Employer.

Section 3 - Transportation of Tools

The Employer agrees to provide transportation for necessary tools, equipment, materials and supplies which cannot reasonably or safely be transported by hand.

Section 4 - Protective Clothing

The Employer shall furnish protective clothing and equipment in accordance with the standards established by the Department of Industry, Labor and Human Relations.

Section 5 - Confidentiality of Records

To insure strict confidentiality, only authorized Employees of the Employer shall process or have access to any Employee medical records.

Section 6 - Buildings

The Employer shall provide and maintain all state-owned buildings, facilities, and equipment in accordance with the directions of the State Department of Industry, Labor and Human Relations. Where facilities are leased, the Employer shall make a reasonable effort to assure that such facilities comply with the directions of the State Department of Industry, Labor and Human Relations.

Section 7 - Medical Examination

Whenever the Employer requires an Employee to submit to physical examinations, medical tests, including x-rays or innoculations, the Employer will pay the entire cost of such services not covered by the present health insurance program providing the Employee uses the services provided or approved by the Employer. In addition, if eye examinations for safety glasses are necessary, the Employer will pay the entire cost for one examination during the life of this contract.

Section 8 - Motor Vehicles

All passenger cars, trucks, truck tractors, buses, or multi-passenger vehicles which have a date of manufacture on or after January 1, 1968, and which are covered by the applicable safety standards of the National Traffic and Motor Vehicle Standards issued by the U.S. Department of Transportation, Federal Highway Safety Bureau, that are provided by the Employer for the use or operation by the Employees covered by this agreement shall meet all applicable safety standards for equipment as contained in the appropriate federal statutes and rules. Such vehicles will be subjected to an annual inspection (as mutually agreed locally) with any deficiencies revealed by the inspection to be corrected by the Employer.

Section 9 - Foot Protection

The Employer reserves the right to require the wearing of foot protection by Employees. In such cases, the Employer will provide a safety device or, if the Employer requires the purchase of approved safety shoes, the Employer will pay an allowance of $7.00 per year as an expense check payable the first pay period of the calendar year.

Section 10 - Safety Inspection

When DILHR inspects State facilities, a Union official, upon request, will be released without loss of pay to accompany the inspector for a maximum of two (2) inspections per year.

Section 11 - Compliance Limitation

The Employer's compliance with this Article is contingent upon the availability of funds. If the Employer is unable to meet the requirements of any Section of this Article due to a lack of funds, but the Employer shall make a positive effort to obtain the necessary funds from the appropriate legislative body.

Section 12 - DILHR Regulations

The provisions of Wis. Admin. Code Chapter IND 1000-2000, effective Setember 1, 1975, shall apply to employees covered by this agreement.

State Standards

Whereas the state corrections agency previously may have been an exception to state laws and administrative regulations, no exception is contemplated under the contract provision. Few administrators will argue that the exclusion was unwarranted. Most will find that the effects of the change will be far-reaching.

First, all standards and procedures for building, equipment, food and storage handling will be regularly inspected by an independent agency for its use by prisoners as well as employees. While standards for prisoners and for staff in the same facility must be identical, what may be done to correct deficiencies may not be uniform for both groups. For example, substandard food handling procedures may be modified more easily in the officers' dining room than in the prisoners' kitchen or serving area.

Bargaining on Employee Safety and Working Conditions Based on the Enabling Legislation and Contract Preamble

Regardless of any particular contract provision, the correctional union has an inherent right to raise a bargaining issue on a matter of employee safety not specifically covered under the contract. A typical contract will state in a preamble that the contract has as its purpose ". . . the establishment of rates of pay, hours of work, and other conditions of employment. . . ." This is usually a sufficient basis, if indeed any is needed, for the corrections union to call for changes in manpower deployment practices and related operational policies. Some examples of union demands are:

1. All prisoner movement between the industry shops and main housing buildings should include an electronic search instead of the hand search currently in use.

2. There should be no less than two officers per cell block on all shifts.

3. Tower 6 (sally port) should be manned on weekends as well as during the first shift (a tower usually not covered on the shifts or days indicated)

4. A cell block officer should not be required to leave this post during the meal movement periods in order to cover an intermittent post in the inmate dining room.

These requests generally follow from employee dissatisfaction with adjustments to the staffing plan required by fiscal limitations. Management often will have no great difficulty in agreeing that the changes requested would be an improvement. The problem is how much improvement is feasible--i.e., how much safer employees will be and at what cost. Management-initiated staffing and assignment issues involve the setting of priorities, assessments of costs and benefits, and consideration of the impact on the institution as a whole.

If these issues cannot be resolved through negotiations, they should not be subject to impasse resolution procedures involving arbitration. Impartial third parties should not be allowed to make important management policy decisions which, if adverse to the employer, could set a precedent for other institutions or departments. An alternative at impasse in negotiations on such matters is to provide for either mediation services or a fact-finder whose report is only advisory to the negotiating group.

IMPACT

The effects of negotiations in these areas are:

- Direct benefits to employees in working conditions and safety--generally feasible and desirable changes with new, one-time costs usually involved.
- Application of state health and safety standards--desirable and long overdue in prisons. Problems will raise multi-year solutions because of budgetary impact.
- Manpower deployment and operational policy issues--severe limitation of management rights if negotiations are allowed to go to arbitration. Seniority post and shift assignment and shift differentials are also deployment issues. A related proscription would be bilateral change of policy regarding prisoner assignments, visiting rights, custody classification for assignments, change of program, recreation and related prisoner activity schedules, etc.

Related Issues

1.11 - Manpower Management in Prison Administration

1.14 - Union Activism in Correctional Program Policy

2.05 - Seniority Provisions for Job Assignment

2.12 - Rest Periods and Meals

2.14 - Shift and Other Pay Differentials

2.18 - Shift Overlap

3.03 DISCIPLINE

Issue: How can management effectively exercise its rights to apply disciplinary sanctions against employees for cause under the grievance appeal procedures?

PRINCIPLES FOR ADMINISTRATIVE ACTION

The State of Wisconsin-AFSCME contract provides a typical provision on discipline:

> Section 9 - Discipline
>
> The parties recognize the authority of the Employer to suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause. An employee who alleges that such action was not based on just cause may appeal a demotion, suspension, discharge, or written reprimand taken by the Employer beginning with the Third Step of the Grievance procedure except that written reprimands shall begin with the First Step of the grievance procedure.
>
> An employee shall be entitled to the presence of a designated grievance representative at an investigatory interview (including informal counseling) if he/she requests one and if the employee has reasonable grounds to believe that the interview may be used to support disciplinary action against him/her.
>
> If any discipline is take against an Employee, both the Employee and Union will receive copies of this disciplinary action.
>
> Section 10 - Exclusion of Probationary Employees
>
> Notwithstanding Section 9 above, the retention or release of probationary employees shall not be subject to the grievance procedure except those probationary employees who are released must be advised in writing of the reasons for the release and do, at the discretion of the Personnel Board, have the right to a hearing before the Personnel Board.

With the exception indicated for probationary employees, such provisions effectively transfer the employees' appeal rights from the civil service commission to the grievance procedure. In some states, dual appeal routes are available, but seldom are both used. Generally, the process which is more favorable to the employee is selected. In the case of disciplinary actions in which it can be shown that the actions were founded in discrimination based on race, sex, religion, or national origin, employees may elect to take the matter through to appeal to the Equal Employment Opportunity Commission. More often, however, the grievance appeal route is taken and, if successful, and EEO appeal is commenced.

Civil service protections against unfair, arbitrary discipline of employees from reprimands to discharge have long intimidated state managers. Many administrators would prefer to put up with an unsatisfactory employee than to face review of their supervisory practices. Wherever this problem exists, it is found throughout the administrative hierarchy, since the discretion to put up with incompetence is implied by example from higher up in the organization.

The reluctance of supervisors to initiate disciplinary actions against subordinates is even greater under collective bargaining agreements. The union position in defense of a member is similar to that of defense counsel in a criminal trial, where spirited advocacy is unrelated to guilt or innocence. Managers who succeed in winning support of the disciplinary action through the grievance procedure may need the protection of higher management from possible retaliation by the union and its members.

Correctional top management should take special steps to insure that a high standard of performance is expected of all employees, and that it is measured by evidence of its enforcement through administrative acts: special employee recognition for outstanding performance, the effective use of the employee performance rating plan, and the appropriate use of disciplinary processes. Investment in thorough review of existing practices, clear expression of management policy, and training of supervisors and managers are essential. Expert central staff should be available to assist in review of proposed disciplinary actions and in counsel on notifications, written support of actions, etc.

The administrator, of course, should meet and confer with the union before initiating a new level of performance evaluation.

As noted, discipline and dismissal during the probationary period for new employees normally is excepted from appeal either to the civil service commission or through the grievance procedure. It is obvious that this probationary period must provide the opportunity to keep unproductive or ineffective employees from gaining the protections of civil service and the union contract.

IMPACT

Inefficient, unreliable, or inadequate correctional employees, not only weaken the entire team but also can endanger themselves and their co-workers by causing problems in the control of prisoners. The union should support management, in behalf of other employees, by keeping such employees out of the system. On a case-by-case basis, however, the union is expected to hold management fully accountable for the exercise of reasonableness in training, counseling, and warning employees of their deficiencies before commencing disciplinary actions. Where management has failed to document a case, and the discipline is overturned by a hearing officer or arbitrator, both management and the union lose. Management cannot discard its standards any more than it can rewrite the rules to give itself absolute, unreviewable powers to discipline employees.

Related Issues

2.01 - Grievance Procedures, Steps 1-3

2.02 - Grievance Procedures, Steps 4 and 5

3.04 AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

Issue: Can equal employment opportunity and affirmative action programs survive under collective bargaining? What has been done to assure that such programs continue?

PRINCIPLES FOR ADMINISTRATIVE ACTION

It is imperative that union contracts in corrections reflect state equal employment opportunity (EEO) guidelines and the principles of state policy on affirmative action. Most current contracts reflect EEO policy but are silent on affirmative action. All affirmative action programs are silent on the employment of former offenders. It is time that public service unions dealt with employment discrimination against this group.

Although contracts have provisions for EEO, these programs, if they were ever started, have slowed to insignificance in corrections. No general prescriptions for improvement can be offered from experience in the field, but problems encountered in states where attempts have been made to incorporate a progressive policy in personnel recruitment, selection, and assignment can be identified.

Pertinent National Goals and Standards

Standard 14.2, Recruitment from Minority Groups, [illegible] quoted below:

> Correctional agencies should take immediate, affirmative action to recruit and employ minority group individuals (black, Chicano, American Indian, Puerto Rican, and others) for all positions.

1. All job qualifications and hiring policies should be re-examined with the assistance of equal employment specialists from outside the hiring agency. All assumptions (implicit and explicit) in qualifications and policies should be reviewed for demonstrated relationship to successful job performance. Particular attention should be devoted to the meaning and relevance of such criteria as age, educational background, specified experience requirements, physical characteristics, prior criminal record or "good moral character" specifications, and "sensitive job" designations. All arbitrary obstacles to employment should be eliminated.
2. If examinations are deemed necessary, outside assistance should be enlisted to insure that all tests, written and oral, are related significantly to the work to be performed and are not culturally biased.
3. Training programs, more intensive and comprehensive than standard programs, should be designed to replace education and previous experience requirements. Training programs should be concerned also with improving relationships among culturally diverse staff and clients.
4. Recruitment should involve a community relations effort in areas where the general population does not reflect the ethnic and cultural diversity of the correctional population. Agencies should develop suitable housing, transportation, education, and other arrangements for minority staff, where these factors are such as to discourage their recruitment.[1]

Standard 14.3, Employment of Women, is quoted below:

Correctional agencies immediately should develop policies and implement practices to recruit and hire more women for all types of positions in corrections, to include the following:

1. Change in correctional agency policy to eliminate discrimination against women for correctional work.
2. Provision for lateral entry to allow immediate placement of women in administrative positions.
3. Development of better criteria for selection of staff for correctional work, removing unreasonable obstacles to employment of women.
4. Assumption by the personnel system of aggressive leadership in giving women a full role in corrections.[2]

Standard 14.4, Employment of Ex-Offenders, is quoted below:

Correctional agencies should take immediate and affirmative action to recruit and employ capable and qualified ex-offenders in correctional roles.

1. Policies and practices restricting the hiring of ex-offenders should be reviewed and, where found unreasonable, eliminated or changed.
2. Agencies not only should open their doors to the recruitment of ex-offenders but also should actively seek qualified applicants.
3. Training programs should be developed to prepare ex-offenders to work in various correctional positions, and career development should be extended to them so they can advance in the system.[3]

Sex Discrimination

About 95% of inmates in adult prisons are male. A basic EEO policy is to require a higher percentage of women in non-traditional, nonclerical employee classes in prisons for men. Classification counselors, academic teachers, and professional medical staff usually are not a problem where well-qualified women are available. In some instances, work locations in maximum-security institutions present problems for women since the necessary escorts and supervision may not be available. In general, however, the problem is one of discrimination; review by a mixed committee of both sexes often finds in favor of the women on such jobs.

Since most positions in prisons are for correctional officers, some states have already commenced EEO appointments and assignments of women in regular correctional officer posts where there is no inmate contact, as in tower or gun walk posts. The assignment of women officers to such positions in San Quentin Prison in California is a notable example. There are, however, some problems with this practice. These are often the posts the senior officers are bidding on under seniority provisions of the union contract. Also, such assignments can never be much more than tokenism, and the practice is unfair to other officers who are trained in all types of posts and can be deployed to any post when needed in emergencies. Civil service job classification problems also may emerge when some employees perform only the more routine, less difficult duties of a class. (See Issue 3.07, Position Classification and Pay Plan.)

It is difficult for an experienced prison manager to imagine how a woman correctional officer with only non-inmate contact post experience could ever be qualified for a supervisory position as a correctional sergeant or lieutenant. If so, EEO policies may lead to dead-end jobs and stagnation in individual careers. On the other hand, where numbers of women have been employed in various classes in men's prisons, the demeanor of staff and prisoners alike is reported to have improved significantly.

Racial Discrimination

There has been a long history of racial discrimination in prison employment. Initial changes in the 1960s were in the direction of limited or fully controlled minority recruitment to avoid the resentment of the majority employees. Prisons in or near urban areas, however, such as Trenton State Prison in New Jersey, San Quentin Prison in California, and Virginia State Prison in Richmond, expanded into minority recruitment simply because it was necessary to tap a new labor market.

Where there has been a convenient, non-threatening recruitment of blacks and other minorities, extending minority recruitment to other institutions has been comparatively easy. Where there have been no significant prior inroads to institutionalized discrimination, most unilateral, management-directed affirmative action efforts to employ racial minorities have failed.

In Massachusetts, for example, in the early 1970s, there was a deeply entrenched system of racial discrimination. This was assisted by the state civil service agency, which permitted all new correctional officers to be employed provisionally, subject to passing a qualifying (not open) examination before the completion of one year of service. Only friends and relatives of present employees were hired. In addition, the separate institutional unions had a contract which established seniority in all post assignment selection plans, with seniority to be determined only by length of service in the same institution. This precluded both transfer and promotional movement between institutions, which was reinforced by the purposeful absence of state authority or funds to reimburse employees for relocation expenses.

In 1972, the Commissioner of Corrections, with the aid of a Department of Justice-LEAA grant, attempted to institute a pilot program for recruitment and placement of blacks in the prisons. The funds provided new, temporary positions so that no existing position loss would occur as these new employees were hired. A special temporary classification was established to facilitate selection. Fifteen highly qualified blacks were recruited (where, in the past, almost none applied); these were considerably better educated and possessed more varied and pertinent experience than the typical Caucasian correctional officer recruit. The problem was that the department's recruit training academy also was under direct control of one of the prisons. Training consisted of military and police drills and rituals (e.g., dawn roll call and calisthenics, breakfast, close order drills), and classroom lectures on specific security operations such as use of mace, gas, weapons, gas masks, and handcuffs.) The academy was certain to discourage many recruits and to eliminate those viewed by the all-white academy staff as nonconformists. The Commissioner's plan, therefore, had to be concerned with improving the training climate and content. First, the academy was relocated to the available site--the recently abandoned boys training school at Shirley* (an unfortunate reminder to many of the old guard staff that correctional reform could mean loss of jobs.)

The training staff was directed to broaden the training and was provided with a black training consultant (with experience gained from the U.S. Bureau of Prisons.) More emphasis was to be placed on the social and personal characteristics of prisoners, the operational organization and structure of the prison, prisoner programs, parole board, etc., as well as on the role and duties of a correctional officer. After one week of this training, the trainees were to be deployed for two weeks of assignment in the various institutions--subsequently to return for one additional week of training reinforcement in areas of need .

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*Coincidentally, the Massachusetts juvenile correctional system was undergoing a massive shift of operations from institutions to community-based contracted services during this period.

This was a critical error since there were insufficient staff to monitor the trainee assignments in all of the institutions, and all eventually left the program. The original plan, unfortunately later modified for institutional convenience, was to place all trainees in one institution so that more supervision of their on-the-job training could be provided and any staff hostility could be absorbed by the total trainee group. Thus, training all 15 trainees on one shift was considered necessary to reduce the isolation and vulnerability of the black trainees, and to encourage a more positive introduction of the new officers to the prison. In the end, the entire project was a demoralizing failure, which makes more difficult any subsequent project with similar objectives.

Where there is an established pattern of minority employment in prisons, even if in only one of several institutions, the future of EEO is relatively certain. Over time, with blacks, Chicanos and other groups advancing to sergeants, lieutenants, captains, and superintendents, and with their transfer to other institutions, total racial integration of personnel will probably occur without special efforts of top management to protect the minorities.

Union Roles in EEO and Affirmative Action

State-union contracts are decidedly supportive of minority employees in prisons. This is because minorities benefit from the detailed rules on post assignment selection--mostly by seniority--which reduce discretion by 1st and 2nd line supervisors in this area. In high-security institutions, instead of anticipating the first several years of night shift assignment in isolated tower posts, minority employees often find themselves assigned to busy day shifts--inmate contact posts--which provide the most difficult work at a time when the employee is most work-motivated. Minority employee survival, therefore, is assured as minority prisoners are more satisfied with "relevant" supervision, and as minority officers with experience in the most difficult positions are advanced to the supervisory ranks.

Other Practical Considerations in Minority Recruitment and Assignment

- In an urban area prison, the minority correctional officer will find himself living in a neighborhood where he may be acquainted with or be known to former prisoners and families of prisoners, as well as to the victims of prisoners he supervises. This poses the unusual problems of possible unpleasantness and risk to the employee and his family. Without financial assistance--also unlikely for a ghetto family--the correctional officer will need to save diligently for many years to afford the move to the suburbs as is common among police. Minority officers thus have joined with rural whites in union demands for the authority to carry hand guns off duty as peace officers.

- Sexual stereotyping of women employees cannot bt totally rejected in the abnormal environment of a sexually segregated prison; neither can the stereotype of the sexually-crazed prisoner for the exceptions there may be. The "convict-code" will not be broken in order to support or protect the welfare and safety of a popular female correctional officer who may be seen as mother-figure, sister-figure or a sex symbol by the prisoners and staff.

- Positive recruitment efforts for highly qualified women and racial minorities also should be directed to the commissioner's staff in departmental headquarters. This is much more valuable and productive of policy-by-example than concentration of departmental effort in a single position of "Equal Opportunity Coordinator" or other such position isolated from the mainstream of operations.
- A department of corrections should use the union grievance procedure as the preferred mechanism for dealing with employee appeals to EEO enforcement.
- EEO should be redefined to include positive action directed at discriminatory practices in inmate assignment and employment practices in the prisons.

There is an extensive body of law, court decisions, and informative literature on these subjects.*

IMPACT

While it may appear that the historical over-representation of minority races within prison populations would be conducive to recruitment of minority employees, the facts are otherwise. Token employment efforts produce virtually no impact on the social structure of prison personnel. The token black, for example, will more than likely find it undesirable, if not impossible, to find local housing and will continue to commute from an urban area. Only when substantial numbers are involved and where inter-family supports can help in housing location, schools, and recreation, will the recruitment of minority races be a totally successful effort.

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*See especially: Midwest Monitor, July/August, 1976, School of Public and Environmental Affairs, Indiana University, Bloomington, Indiana.

It is unlikely, however, that avoidance of last-hire layoffs, whenever needed, will ever provide an exception for minority hires under state-directed EEO or affirmative action programs. This tends to lend support for a long-term program of increasing minority recruitment rather than short-term "crash" programs for faster catch-up.

References

1. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), p. 474.

2. Ibid., p. 476.

3. Ibid., p. 478.

Related Issue

2.20 - Other Contract Provisions and Omissions

3.05 FITNESS FOR DUTY STANDARDS AND MEDICAL EXAMINATIONS

Issue: How do union contracts provide for fitness for duty standards? What should be done to make it less difficult to institute and apply such standards?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Most correctional systems have been seriously negligent in establishing minimum physical and mental standards for continued work in correctional officer and supervisory positions. The requirement for annual medical examinations grew out of practices preceding collective bargaining. In contracts where medical examinations are required, the provision is concerned with who pays for the examination and with employee rights in the event that management interprets the results in a manner adverse to employee interests.

Existing Standards

Existing health standards deal with the issue of public health--protecting the employee (as well as other staff and prisoners) from infectious diseases, especially tuberculosis.

As long as an employee can walk, stay awake and climb the steps to a gun tower, he is considered physically qualified to continue to work in most systems. When he is unable to perform even these tasks, and if he has reasonably high seniority, management usually will find an assignment he can handle--in the mail room or low-activity ground post.

Every system has made internal provisions for previously satisfactory employees who have become "sick, lame or lazy." While, in many cases, disability retirement would be appropriate, these individuals prefer to maintain the earning level of their current position. At the same time, there usually are as many or more able bodies who could work, but instead are on workmen's compensation and disability retirement because they cannot meet the "official" physical standards of the classification.

The fraternal structure of prison staff relationships tends to perpetuate present practices and to reject the idea of minimum standards which correctional officers should meet for appointment and continued employment. Such standards follow from the concept of "fitness for duty", but in fact, this concept has almost no consistent meaning, especially since it is employed so infrequently. In some states, annual "qualification" on the prison rifle range is a ritual which all go through, but none fail. There is no "failing" score, although scores are kept and posted on the bulletin board and bets are paid off. Nothing goes into the personnel folder--good or bad.

The problem, however, is not that reasonable men could not agree on reasonable standards of health, eyesight and hearing, strength and dexterity, mental alertness and stamina. On the contrary, they could; yet they will not do so unless there is a reasonable plan for dealing with those who no longer qualify.

As long as nothing is done, "official standards" may be established and stringently applied in the initial employment examination process, never again to have relevance to the physical, mental, and emotional conditions required of employees on the job. The consequences of this policy can be enormous to an institutional budget if the costs of compensation or the state share of temporarily and permanently disabled employees is carried by the corrections budget. These costs, added to the costs of positions wasted by the assignment of physically incompetent employees, have been found to exceed 10% of the total correctional officers' payroll.

Positive Action

Where contracts exist, an independent management study of present practices is warranted. The results of such a study should be referred to a joint management-union committee created for the purpose of reviewing and acting on results.

Where no contracts exist, the corrections agency should request a special management study of the problem by the departments of finance and personnel, with the assistance of an independent management consultant if necessary. The recommendations should be considered by the governor or the responsible agency for service-wide application.

IMPACT

In many areas of correctional operations, management negligence creates a "current practice" which may be difficult to change under collective bargaining. For example, when make-work has been provided for employees unable to work, it can be a precedent which makes it difficult to institute changes even for new employees--let alone those already enjoying the benefit.

Such "hidden benefits" are seen by other employees variously as management favoritism or successful thievery by employees that is to be evaluated whenever the opportunity arises. Either perception is corrosive of desirable employee attitudes, especially in corrections. Also, prisoners observe the ways in which employees and supervisors conspire, with management acquiescence, to obtain benefits which they do not really deserve. It is a poor role model for prisoners where correctional employees get something for nothing.

References

No references in this area have been found in current literature.

3.06 NONCUSTODY CLASSES

Issue: How can the personal and professional interests of employees in noncustodial classes, often in other bargaining units, be given proper weight in the collective bargaining process?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Correctional administrators with years of experience in attempting to introduce programmatic changes into the institutional system should be especially sensitive to policies or practices arising from collective bargaining which adversely affect these programs.

Strong and effective security systems are fundamental to prison operation, primarily as a prerequisite for effective human development programs. The political power of the correctional officers union should not be permitted to determine departmental policies where they involve service areas such as:

- Education services;
- Vocational training;
- Prison industries and prison work assignments for inmates;
- Health care, sanitation, and safety of inmates,
- External relationships of prisoners to family, and reintegration support services;
- Recreation, use of leisure time, decent meals, and pleasant meal times;
- Fair evaluation for release decisions, and the ability of the institution to assess trustworthiness and self-control of prisoners by status changes and to provide activities which enable demonstration of growth in these traits;

- Operations research and evaluations.

The job classifications involved in the previous functions include the following generic groups:

(1) Academic and vocational instructors;

(2) Industrial, plant operations and maintenance journeymen and supervisory classes;

(3) Supply and laundry services supervisors;

(4) Culinary supervisors;

(5) Medical professionals and sub-professionals;

(6) Professional recreation and hobby craft supervisors;

(7) Social science, counselors, psychologists and researchers;

(8) Administrative staff, accountants, budget analysts, and administrative assistants.

These employees, although small in number, are critical to the achievement of a balanced and comprehensive prison program. Their existence can be threatened by alienation from institutional management when correctional officers' work and benefits become comparatively distorted (e.g., when pension benefits for correctional officers are made significantly superior to those of other classes.)

In addition, the correctional officers' contract and the continuing relationship of the union to the prison superintendent can restrict the access of prisoners to these other institutional services. Because inherent conflicts between security and service operations are so senstitive, only the prison superintendent can authorize the changes which must occur almost continuously--

expanding and contracting security while contracting and expanding support and treatment programs. Management discretion to do this for the benefit of the entire institution would be severely crippled if changes were made permanent through the collective bargaining process (such as custody classifications, determined only by security personnel, as a criterion for the programs and prison areas to which prisoners could be assigned) or the normal flexibility (security expansion and contraction) is first subject to meet-and-confer negotiations and/or grievance appeals.

IMPACT

The bilateral bargaining away of management's rights does not preclude the issues involved in multilateral negotiations or in meet-and-confer discussions of such topics. Management will not easily deal with challenges to current practice by arbitrary authority. Such challenges, whether justified or not, should almost always be faced with the presence of union officers or principals from the other prison services. Management is more likely in the future to institute such changes on a trial basis, and with greater review by inmate leaders, before new policies and procedures recommended by any source are fully implemented.

Related Issues

1.07 - Increasing Productivity With Management-Union Cooperation

1.13 - Management Rights

3.02 - Conditions of Work and Employee Safety

3.07 - Position Classification and Pay Plan

3.07 POSITION CLASSIFICATION AND PAY PLAN

Issue: How is the position classification and pay plan adversely affected by union negotiations? What options should management consider in resolving these problems?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Management has the right to determine the duties and responsibilities of the positions which involve the performance of correctional functions for which management is accountable.

Since the position classification plan is a device established for management convenience, management has the inherent authority to revise the classification plan to reflect the duties and responsibilities assigned to positions under management direction. (A position is defined as a set of duties and responsibilities which requires the full-time services of one employee.)

There are various ways, however, in which management's rights are circumscribed or controlled:

- Position classification invariably is approved and supervised by a control staff organization where both specialized skills and a statewide management perspective can be brought to bear on classification decisions.

- Once established, position classifications are difficult to change. Changes in tasks or duties assigned to positions where they involve possible effect on classification, compensation, and organization should be approved by the central finance agency before reclassification is determined.

- Union contracts usually provide the union with rights to discuss duties assignment and classification impact. The contract will have detailed procedures to protect employee job rights in the event of reclassification and reorganization.
- Corrections departmental considerations also may control the extent to which individual institutions are allowed to develop unique task assignments to positions in existing classificiations.

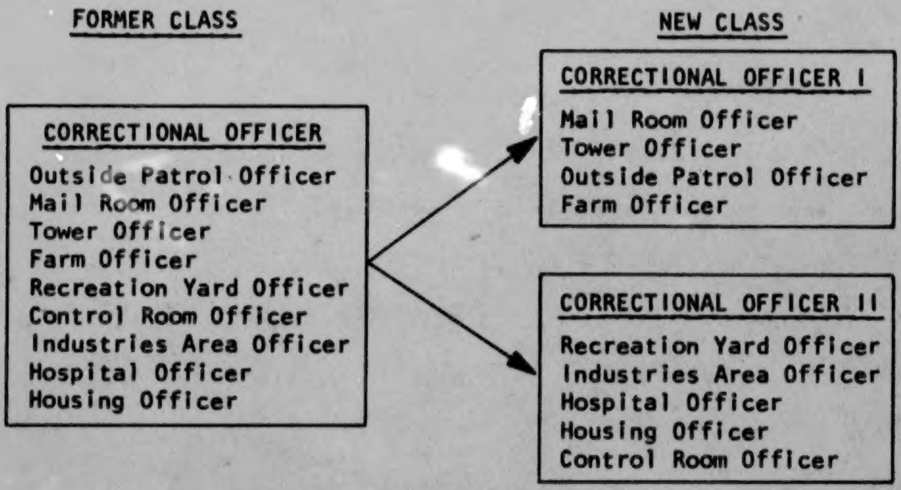
The term "management" in this context thus includes all those agencies and persons with management roles involved in the process of controlling the discretion of an individual subordinate manager of a prison. This fragmentation of authority and the inherent delays in accomplishing any changes are often so discouraging to a prison manager that he voluntarily limits his own planning to operational problems which do not involve position classification changes. Some union contracts, however, cause prison managers to look for more drastic solutions.

Seniority Job Selection as a Classification and Salary Issue

The salary range is meant to recognize the increased value of an employee as experience is gained in the particular class. Employees with the most experience are expected to perform the more difficult positions in the class (the inmate contact positions), the least experienced officers tend to end up with the least difficult assignments. Where the seniority incentive results in the more senior officers taking the least difficult positions, the most difficult positions tend to be performed by the least experienced officers.

Many plans provide for an extra salary step or two, or flat dollar amounts regardless of the salary level, based on long seniority on the job (15 years and over). Here again, there may be no basis for these additional payments in terms of more responsible or more difficult work performed. In other classifications, where even with seniority job assignments there are few no-contract positions, the senior employees often select the assignment with the greatest difficulty and prestige.

Classification analysts, in determining the work of correctional officers under seniority assignments, would have to conclude that there are two classes where formerly there was one.


FORMER CLASS
CORRECTIONAL OFFICER
Outside Patrol Officer
Mail Room Officer
Tower Officer
Farm Officer
Recreation Yard Officer
Control Room Officer
Industries Area Officer
Hospital Officer
Housing Officer
NEW CLASS
CORRECTIONAL OFFICER I
Mail Room Officer
Tower Officer
Outside Patrol Officer
Farm Officer
CORRECTIONAL OFFICER II
Recreation Yard Officer
Industries Area Officer
Hospital Officer
Housing Officer
Control Room Officer

The distinguishing characteristic of the Correctional Officer II position is that of direct prisoner contact (for example, body searches at critical movement points). Officers in this class are involved in law and procedure enforcement and must write reports on face-to-face disciplinary contacts as well as evaluation reports on prisoners assigned to his area of work. Thus, the officer is under some risk of prisoner retaliation.

Correctional Officer IIs would be compensated at one or two steps (one or two salary ranges) higher than the Correctional Officer I position.

Such a change might be a controversial issue among correctional officers. Few of the senior officers would oppose the move unless the pay advantage was too little; some of the younger officers might oppose it because the indicated assignments of the Correctional Officer II position may appear more interesting. Furthermore, this type of contact post often is a prerequisite for eligibility for promotion to Sergeant. Division of this class also would yield some additional administrative complications in establishing post assignments.

In any event, on a purely technical basis, the proper classification and salary administration actions would be the following. In a large system where there is some cross-comparison of correctional officers with state or city police, the Correctional Officer II position would be most comparable. On the basis of job task analysis, personnel analysts almost invariably find correctional officers, where the two classes are combined, to be lower in overall responsibility, difficulty, skills required, and individual and social risk as compared to police positions. Thus, where the class is divided, there would be more merit to salary parity for the Correctional Officer II position. As part of both the internal administrative process and the political process, the responses of unions to these salary parity issues cannot be predicted. At parity, for example, police officer salary increases would necessarily pull correctional officer salaries with them, thus considerably raising the total cost of any future policy pay increases. And, as indicated, correctional officer pay increases have a direct effect on many other prison classes.

Area Pay Differentials

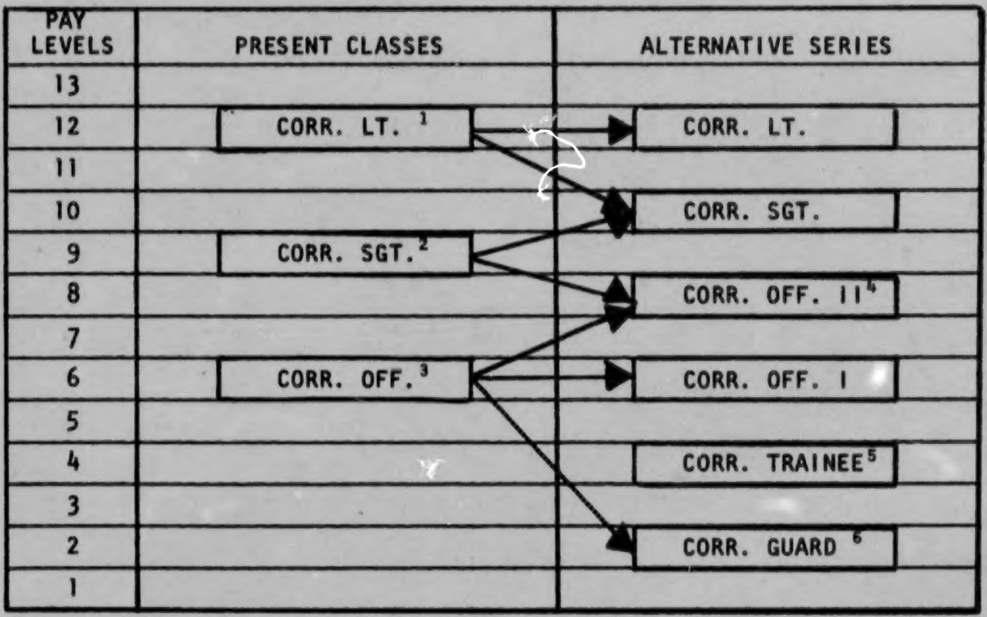
There are considerable differences in costs of living and amenities between urban and rural areas. The majority of prisons are located in rural areas, but some prisons are in or very near a large city. Thus any salary level appropriate for one area is inappropriate for the other. Cost-of-living adjustments by area are fully warranted in these cases. While such differentials are common in private industry, they are rarely if ever found in government, primarily because of the administrative problems involved and the diverse representation of all areas in the legislature. It might seem that legislators in lower-cost areas would rather that state employees in that area were overpaid and content and would tolerate local employer complaints about unfair salary competition from the state. On the other hand, where state salaries are at a level more appropriate for low-cost, non-urban areas, urban prisons will be seriously handicapped in their ability to recruit and retain competent personnel. The few competent recruits too often stay to obtain civil service status and then transfer to rural locations where the state salary provides a higher standard of living.

The administrative difficulties arising from area pay differentials are formidable. For example, what critera could be used to define the areas and to calculate the appropriate adjustment? And what could be done to prevent the differential from restricting employee transfers and promotions from high to low areas? The Federal Civil Service Commission has dealt with this problem effectively by dropping the first and sometimes the second step in entry classes in high-pay urban areas. Thus, new employees start at a 5% or 10% higher rate, but are still in the same salary range as others hired elsewhere at the first step. Once appointed, the correctional officer will keep his higher step even if transferred to a normal or low-pay region.

Other Classification and Pay Innovations

Whether or not the basic or journeyman correctional officer class is divided, the correctional officer series may need further modification. The need for change may be increased as a result of contract provisions which produce rigidity in classification use, for example, where previously out-of-class assignments were more informal and management was unconstrained by seniority assignment requirements.

In this problem of class structure, pay differentials between the grades of correctional officer may vary with the pay for sergeants and the extent to which the sergeant class has been used for the "most difficult" correctional officer assignments.


PAY LEVELS
PRESENT CLASSES
ALTERNATIVE SERIES
13
12
11
10
9
8
7
6
5
4
3
2
1
CORR. LT. 1
CORR. SGT. 2
CORR. OFF. 3
CORR. LT.
CORR. SGT.
CORR. OFF. II 4
CORR. OFF. I
CORR. TRAINEE 5
CORR. GUARD 6

Notes

1. The Correctional Lieutenant would be unchanged, except that a few "weak" positions may be reallocated to Correctional Sergeant.

2. The Correctional Sergeant will be reconstituted as a supervisory or unusually difficult/technical position (clearly above Correctional Officer II).

3. Correctional Officers would be divided into two grades as previously described.

4. Some "strong" correctional officer positions may be reallocated to Correctional Officer II.

5. A new class of correctional trainee may be established with a two-step salary range. Successful trainees may be advanced one step on completion of six months of trainee probation. They may advance in six months to step 2. Before the completion of the next year, they must either be advanced to Correctional Officer I or discharged for inadequate performance.

6. The class of "security guard" might be placed here.

Administrative implementation of such a plan of class structure revision has obvious complexities, such as dealing with incumbent moves to new classes, the distinctions made between grades, and how selection for movement is made.

In many states, under collective bargaining, creating a second grade of senior correctional officer one step above the present correctional officer class would solve many problems, possibly well worth the costs of change. If the new class is only one step higher, movement to this class can be by management selection, without civil service examination, where a prime consideration is seniority in the lower grade. Senior employees who cannot or choose not to accept such assignments are simply not reclassified. A policy issue may emerge regarding senior employees raised to this new class who subsequently cannot perform the more skilled and rigorous duties because of age and infirmities. Such an employee should be demoted--remain at his present pay rate but if it is the maximum step (which is higher than the maximum pay of the lower class) receive a "Y" or red circle rate until the pay schedule is raised to equal or exceed that amount. However, employees raised to the rate of the new class should perform in that class for a reasonable minimum period of time, for example, 6-12 months. Employees who are advanced and reassigned to duties of the lower class within the minimum period should be reduced in pay by the same amount.

Experience suggests that if careful concern is not directed to protecting the integrity of the new class, the new class will be compromised by its extensive use for senior employees without regard to duties assigned--or more precisely, the positions to which they were assigned.

Other Classification Concepts

Some states have been experimenting with new concepts of classification in which well-educated and motivated correctional officers are assigned the duties of a prison classification and parole officer. Such classes have been called "Correctional Service Officers." There may be two or three levels of such classes based on other supervisory duties. Such classes do not replace the correctional officer series, but are actually a merging of basic duties of the two parent classes--Correctional Officer and Correctional Counselor or Classification Officer. Evaluations may vary considerably, but the first level of correctional service officer is paid at about the Sergeant level; and the third level (if needed) is paid at the Senior Correctional Counselor or Captain level.

Since the qualifications for Correctional Service Officer may include completion of community college education in the behavioral sciences (corrections, education, psychology, social work, sociology, etc.) one or two years experience as a correctional officer, and completion of a prescribed in-service training curriculum, it is a classification which would fall between two conventional bargaining units. While this would be a matter for negotiation with the union, it appears that, because of its operational functions, it is related more closely to the correctional officer series than to the professional social worker classes. Generally, the supervisory content makes it possible that all classes of this group should be exempt from the bargaining unit until a supervisory bargaining unit is established.

Tower Guards

In some institutions, the tower posts are concerned exclusively with raising an alarm on perimeter intrusions, While some may be armed, firing restrictions have been ordered so that weapons are used to warn the escapee as well as to provide some notice to others than an escape is imminent. Even where existing tower officers are instructed to fire, in some cases the general practice is to warn only; in others, no escapees have been hit by shotgun or rifle fire for years. Thus, the use of a correctional officer rather than a security guard (a lower paid class) may warrant discussion with the central personnel office as well as with the union.

Broadening the Correctional Officer Classes

It is feasible to consider broadening correctional classifications such as correctional officer (which is a broad class to begin with) and narrowing the classes at the same time. For example, by use of a series specification and selective recruitment and certification, the correctional officer series could be expanded to include many other positions and classes which have substantial correctional and security responsibilities. This may be one way to reduce the number of "dead ends" in correctional work for many of the typical non-security prison jobs. In general, while not attempting to "break" the sound inter-class comparisons which may be warranted for service-wide compensation comparisons and service-wide career advancement programs, institutional corrections is in need of better targeting of recruitment for correctional work of counselors, teachers, vocational instructors, maintenance and engineering trades, and culinary services.

The technical or professional content of these types of positions is relatively easy to determine, but the ability and desire to work with, supervise, and train prison inmates is more critical in on-the-job performance. It is therefore conceivable that union staff and employees, working together with correctional managers and central personnel staff, could agree on new plans which would benefit everyone, whereby:

- The classification scheme will facilitate more emphasis on interpersonal skills in the examination process for positions in a correctional setting, and the examination plan may place greater weight on performance testing than on written tests.

- Specialty options may be included in broad class specifications, whereby it may be possible in correctional officer recruitment to provide for selective certification from a list of eligibles only for those who also have verified qualifying experience in needed technical areas of correctional officer assignment:
    - Sewage and water plant operations
    - Boiler house operations
    - Typing and timekeeping (captain's office)
    - Medical service operations (hospital)
    - Library or medical records (prison records office)
    - Retail sales/small business operations (prisoner canteen)
    - Storekeeping, receiving and release (warehouse and commissary)
    - Culinary operations (for assignment as first-line supervisors of inmates assigned to culinary services):
        - General
        - Meat shop
        - Bake shop
    - Laundry operations (assistant laundry supervisor)

It is possible that an effective prison worker or supervisor can be recruited from a special corrections or general state class for each specialty indicated. At the same time, each position has duties which are similar to, and sometimes indistinguishable from, those of correctional officers. There is a need to recruit such persons on the basis of their aptitude for correctional work as well as their specialist skills. On employment, they would be first qualified by training and assignment as a correctional officer and subsequently assigned to the area of their specialized skills. Such an employee should be sensitive to security responsibilities, effective in supervising inmate crews, a good trainer, a fair disciplinarian--one who would rather talk than fight--and interested in inmates as persons in need of guidance and encouragement. These skills are very difficult to screen for in recruitment and examining, but efforts should be made to do so.

While union contracts and the management-union relationship are widely seen as restrictive to management's rights to assign employees within the established classification plan, the opposite could be true as well. For example, while correctional management generally has achieved little progress in increasing the effectiveness of the correctional work force, the presence of the unions could significantly assist in manpower improvement. Unions, as well as the employees they represent, have much to gain and nothing to lose by cooperating with efforts to improve the quality of future workers and the work and career conditions for all employees.

Correctional Officers as Diagnostic Evaluation and Program Agents

Housing, work crew, recreation, and other officer assignments traditionally have focused almost exclusively on security and housekeeping functions. Currently, there is some interest in expanding the duties of employees in such positions to include the establishment of relationships with designated inmates under their supervision and reporting on the results. A behavioral modification plan devised by the prison psychologist for certain inmates could be executed in part by correctional officers who have the most contact with these inmates. Officers could supply important information to classification, counseling, and training staff on inmates' general demeanor, attitude towards supervision, response to criticism, leisure time activities, associations with other prisoners, cleanliness, punctuality, etc. This would permit the diagnostic-correctional progress assessment plan to depend less on speculations about behavioral problems determined by clinical interviews, tests, and analyses of behavior prior to arrest. To this can be added insight on current adjustment, both as feedback on programs and treatments to which the inmate has been subjected in prison, as well as early indications of positive and negative changes as deduced from his conduct in the housing area, on the job, and elsewhere.

Some success with this approach has been found in demonstration projects in juvenile institutions--for example, in the California Youth Authority institutions programmed for behavioral modification and transactional analysis. The relationship between correctional officer and inmate might be improved if the officer contributed to understanding the prisoner's problem and carrying out the treatment and evaluation plan. This could do much to establish the correctional officer as not merely a punitive authority figure but as a person with direct input to the process which ultimately determines future assignments, privileges, conditional releases, and parole.

IMPACT

Management planning too often has been confined by the existing framework for manpower deployment contained in the position classification and pay plan. Many other options exist for the effective deployment of staff and arrangement of new combinations of job tasks for employee job satisfaction and growth.

Little is gained by dwelling on the discouraging statistics on the effectiveness of prisons. What is needed instead is to learn what aspects of the prison experience can be made less destructive and which more favorable aspects can be emphasized. Some gains can be expected through policy changes (e.g., sentences and release systems) and through program development (e.g., vocational guidance, training and planned work experience), but few experienced administrators underestimate the power of prison personnel to make any policy or program succeed or fail.

Major federal assistance in this area could be provided by the U.S. Department of Justice (LEAA), the National Institute of Corrections, the Labor Department, or the U.S. Civil Service Commission.

References

- Reports of the U.S. Joint Manpower Commission, 1967-69, Washington, D.C., especially the following:
- National Advisory Commission on Criminal Justice Standards and Goals, *Corrections*, Standard 16.5-Recruiting and Retraining Professional Personnel, U.S. Printing Office, Washington, D.C., 1973.

Related Issues

1.09 - Civil Service Interrelationships

1.11 - Manpower Management in Prison Administration

3.08 RESPONSIBILITIES OF CORRECTIONAL MANAGEMENT IN PERSONNEL ADMINISTRATION

Issue: What are the responsibilities of correctional managers in personnel administration? How are these affected by collective bargaining?

PRINCIPLES FOR ADMINISTRATIVE ACTION

Four national standards are pertinent to this issue. They include:

Standards 14.1, Recruitment of Correctional Staff[1]

Correctional agencies should begin immediately to develop personnel policies and practices that will improve the image of corrections and facilitate the fair and effective selection of the best persons for correctional positions.

To improve the image of corrections, agencies should:

1. Discontinue the use of uniforms.
2. Replace all military titles with names appropriate to the correctional task.
3. Discontinue the use of badges and, except where absolutely necessary, the carrying of weapons.
4. Abolish such military terms as company, mess hall, drill, inspection, and gig list.
5. Abandon regimented behavior in all facilities, both for personnel and for inmates.

In the recruitment of personnel, agencies should:

1. Eliminate all political patronage for staff selection.
2. Eliminate such personnel practices as:
    a. Unreasonable age or sex restrictions.
    b. Unreasonable physical restrictions (e.g., height, weight).
    c. Barriers to hiring physically handicapped.
    d. Questionable personality tests.
    e. Legal or administrative barriers to hiring ex-offenders.
    f. Unnecessarily long requirements for experience in correctional work.
    g. Residency requirements.

3. Actively recruit from minority groups, women, young persons, and prospective indigenous workers, and see that employment announcements reach these groups and the general public.

4. Make a task analysis of each correctional position (to be updated periodically) to determine those tasks, skills, and qualities needed. Testing based solely on these relevant features should be designed to assure that proper qualifications are considered for each position.

5. Use an open system of selection in which any testing device used is related to a specific job and is a practical test of a person's ability to perform that job.

Standard 14.11, Staff Development[2]

Correctional agencies immediately should plan and implement a staff development program that prepares and sustains all staff members.

1. Qualified trainers should develop and direct the program.
2. Training should be the responsibility of management and should provide staff with skills and knowledge to fulfill organizational goals and objectives.
3. To the fullest extent possible, training should include all members of the organization, including the clients.
4. Training should be conducted at the organization site and also in community settings reflecting the context of crime and community resources.
    a. All top and middle managers should have at least 40 hours a year of executive development training, including training in the operations of police, courts, prosecution, and defense attorneys.
    b. All new staff members should have at least 40 hours of orientation training during their first week on the job and at least 60 hours additional training during their first year.
    c. All staff members, after their first year, should have at least 40 hours of additional training a year to keep them abreast of the changing nature of their work and introduce them to current issues affecting corrections.
5. Financial support for staff development should continue from the Law Enforcement Assistance Administration, but State and local correctional agencies must assume support as rapidly as possible.
6. Trainers should cooperate with their counterparts in the private sector and draw resources from higher education.
7. Sabbatical leaves should be granted for correctional personnel to teach or attend courses in colleges and universities.

Standard 14.6, Personnel Practices for Retaining Staff[3]

Correctional agencies should immediately reexamine and revise personnel practices to create a favorable organizational climate and eliminate legitimate causes of employee dissatisfaction in order to retain capable staff. Policies should be developed that would provide:

1. Salaries for all personnel that are competitive with other parts of the criminal justice system as well as with comparable occupation groups of the private sector of the local economy. An annual cost-of-living adjustment should be mandatory.
2. Opportunities for staff advancement within the system. The system also should be opened to provide opportunities for lateral entry and promotional mobility within jurisdictions and across jurisdictional lines.
3. Elimination of excessive and unnecessary paperwork and chains of command that are too rigidly structured and bureaucratic in function, with the objective of facilitating communication and decisionmaking so as to encourage innovation and initiative.
4. Appropriate recognition for jobs well done.
5. Workload distribution and schedules based on flexible staffing arrangements. Size of the workload should be only one determinant. Also to be included should be such others as nature of cases, team assignments, and the needs of offenders and the community.
6. A criminal justice career pension system to include investment in an annuity and equity system for each correctional worker. The system should permit movement within elements of the criminal justice system and from one corrections agency to another without loss of benefits.

Standard 14.7, Participatory Management[4]

Correctional agencies should adopt immediately a program of participatory management in which everyone involved--managers, staff, and offenders--shares in identifying problems, finding mutually agreeable solutions, setting goals and objectives, defining new roles for participants, and evaluating effectiveness of these processes.

This program should include the following:

1. Training and development sessions to prepare managers, staff, and offenders for their new roles in organizational development.
2. An ongoing evaluation process to determine progress toward participatory management and role changes of managers, staff, and offenders.
3. A procedure for the participation of other elements of the criminal justice system in long-range planning for the correctional system.

4. A change of manpower utilization from traditional roles to those in keeping with new management and correctional concepts.

Commentary

The standards quoted above overlap in some ways with a number of other issues discussed in this Guide. All of these standards are compatible with the analysis and recommendations offered elsewhere in the Guide, with one exception: The recommendation to "discontinue the use of uniforms" (Standard 14.1) may not be universally desirable. The alternative to official uniforms usually has been another, more informal, blazer and slacks combination made into a "uniform" by affixing a correctional patch over the breast pocket. To do less would be to eliminate the income tax deduction benefit for uniform allowances. (See Issue 2.13, Uniform Allowances and Replacement, for more discussion.)

IMPACT

These standards discourage the conscientious correctional administrator who accepts the need for their implementation but is overwhelmed by the scope of the many recommended changes. The corrections manager also must consider many other aspects of correctional administration. It is obvious that some things must be done first and others later, but the administrator's priorities may be determined by other events and parties (e.g., union officials and state labor relations executive).

REFERENCES

1. National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Washington, D.C.: Government Printing Office, 1973), p. 471.

2. *Ibid.*, p. 494.

3. *Ibid.*, p. 482.

4. *Ibid.*, p. 485

RELATED ISSUES

1.07 - Increasing Productivity with Management-Union Cooperation

1.09 - Civil Service Interrelationships

1.10 - Training in Employee Relations

1.11 - Manpower Management in Prison Administration

2.00 - Salaries

3.04 - Affirmative Action and Equal Employment Opportunity

3.07 - Position Classification and Pay Plan

CHAPTER IV

ISSUES INVOLVING OTHER CORRECTIONAL SERVICES

State juvenile corrections and adult parole services were briefly reviewed in Pennsylvania, Illinois, and Wisconsin. City corrections in New York and county probation services in Los Angeles, where collective bargaining is already in place, also were examined. While this sample is inadequate for making many generalizations, it is clear that collective bargaining presents much more serious management problems in institutions than in non-institutional correctional services. There appear to be several reasons for this: (1) Social service correctional employees are in closely related classes; (2) they have long been paid substantially more than the basic social worker classes in welfare agencies, sometimes even more than the most specialized classes of child welfare services worker or psychiatric social worker; and (3) these employees have only limited ability to punish their employer by job actions or strikes, except in the function of preparing presentence investigation reports or intake screening at the juvenile hall or receiving home.

In the latter case, since it would be against the criminal or juvenile courts, probation officer strikes and job actions have been thought to involve unusually great risks to the union. However, a recent strike of probation staff in Allegheny County (Pittsburgh), Pennsylvania, was successful in that it resulted in a substantial salary increase award from the arbitrator.[1] Final salary increases also went from clerks up to the court administrator and thus were of benefit to all nonjudicial employees.

4.00 JUVENILE INSTITUTIONS

Employees in state juvenile correctional institutions generally are as fully organized as those in adult prisons, but their impact is considerably less. This seems to be due to two significant features of juvenile institutions:

1. They are much smaller and their more information organization and staffing reflects a substantially greater proportion of manpower assigned to the so-called "treatment services".
2. The dominant employee group, typically called "group supervisors," have a mixture of custodial, counseling, and supervisory duties, have substantially more education than prison correctional officers, and relate to residents (prisoners) differently. They are seldom concerned with "public protection" and "punishment" issues. The group supervisors see themselves more as social agents than law enforcement agents and do not stand in opposition to their clients.

On the other hand, in some of the more populous states, relatively large institutions for the older, more criminally sophisticated juveniles and youths are almost indistinguishable from adult security prisons.

4.01 JUVENILE CORRECTIONS IN PENNSYLVANIA

Dr. Jerome Miller recently was appointed by the Governor of Pennsylvania to head a reorganized department of youth services, whose principal function was to operate the state's facilities for juvenile delinquents. This administrator became celebrated as the Commissioner of Youth Services in Massachusetts who successfully closed down the state's juvenile institutions in 1972, thereby earning the unmitigated enmity of the employee unions--AFSCME National Office in particular. The National Office of AFSCME went so far as to publish a report, "Out of Their Beds and Into the Streets", which emphasized all possible negative outcomes of the juvenile corrections reforms in Massachusetts. The booklet is intended to reinforce union members elsewhere in their struggles to protect their own institutions and jobs from similar reforms. The AFSCME National Office sent a communication to the Governor of Pennsylvania opposing Miller's appointment. It is not known if the SEIU, which represents a large part of the Youth Services Department's professional employees, also objected to Miller's appointment.

To be forewarned is to be forearmed. The already organized employees of the Pennsylvania institutions have typecast Miller as one whose ultimate purpose is unchanged: to deinstitutionalize the juvenile justice system. Miller asserts that he seeks to correct existing deplorable conditions, to reduce institutional overcrowding by refining the commitment criteria of the juvenile courts, and to remove juveniles from the worst institution, the state prison in Camp Hill. The latter has been done--no small accomplishment--but little else. This seems to be due to the broad scale of resistance by the unions, departmental middle management who do not trust their new leader or expect him to be in power very long. Inexplicably, many other influential elements of the juvenile justice system, judges, reform leaders, and legislators, have not been as supportive as would be expected, considering the poor conditions of juvenile systems, both state and local institutions. Miller's considerable abilities, his reform dedication, and great energy have been dampened in Pennsylvania in 1975-76. This has been the period immediately following AFSCME's success in winning representation of over 75 percent of the state employees under the new collective bargaining statute.

4.02 CORRECTIONAL SERVICES IN NEW YORK CITY

The City of New York Department of Correction is almost unique among local adult correctional systems. While large in size, it is almost totally involved with the most limited aspects of adult corrections--pretrial detention, since most of its sentenced misdemeanants are by agreement transferred to the State because of inadequate facilities in the City.

New York City correctional officers have long been represented in collective bargaining and have acquired one of the most generous employee benefit packages in the United States. One of the reasons for this is their union's political strength; another is the City ordinance providing for correctional officer salary parity with the police department. Since July 1975, the annual salary range for correctional officers has been $13,673 to $17,458, and there are longevity adjustments of $100 (yearly) for each five years of service to a maximum annual salary of $17,858. Additionally, there is a salary cost-of-living clause in their contract, an annual uniform allowance of $265, 12 paid holidays, 20-27 days annual vacation, free health and hospitalization insurance, a City-paid annuity fund, a generous pension plan, and "...leave with pay for the full period of any incapacity due to illness, injury or mental or physical defect, whether or not service connected...". Night differentials are 10 percent of the officers' salary rate. Thus, a night shift officer with four years experience would receive an annual salary of $19,203.

With overtime at time and one-half, nearly all correctional officers' annual salaries well exceed $20,000. Since their pension plan is based on the highest paid rate, an officer promoted for only one day will retire with that higher rate used for calculating the pension payments (similar to the practice in Pennsylvania and Wisconsin).

4.03 PROBATION AND PAROLE IN PENNSYLVANIA

The major administrative problems in state probation and parole under collective bargaining are the reduced work week, overtime provisions and seniority provisions in transfers and promotions. In most probation and parole agencies, the work week is a fictional 40 hours. The professionalism of the job has long been established with probation officer trainees recruited from college graduates with additional pertinent graduate work or experience. Evening calls, late night trips to the jail, and writing reports at home at one time were done without added compensation or compensating time off.

Collective bargaining in the Pennsylvania Bureau of Probation and Parole brought about a 37½-hour work week--the same as other state white-collar workers. While the objective was higher pay, the state already had a higher rate than Philadelphia County or any other probation department in Pennsylvania. The reduced workweek was expected to produce considerably more paid overtime, which has failed to materialize. The contract with AFSCME covers state probation and parole officers, while the Service Employees International Union (SEIU) represents the prison-based correctional counselors, as well as the youth services classes of juvenile court consultants, youth services consultants, youth development counselors, and residential group work supervisors. (This bargaining unit structure is unfortunate since it divides closely related classes into separate units.)

The AFSCME contract recognizes that the workweek of probation and parole officers is "employee controlled." Accordingly, such employees may work three 12½-hour days due to the work demands, thereby exhausting their 37½-hour workweek. Additional work beyond this time would require prior authorization of the supervisors, who also would have the right to review the regular week's work. Since there were limited overtime funds available, there was little overtime.

The effect of this workweek change, however, should have been more apparent since the actual time worked by the probation and parole staff had been substantially reduced, particularly since it occurred during a period of rapidly increasing caseloads. A deeper examination of this question is warranted.

The geographical dispersion of state probation and parole staff--here as elsewhere--tends to hold many to their present work area with its social and economic ties. Promotional opportunities, therefore, are often voluntarily limited by the employee himself to his present area. Seniority problems are otherwise typical and would apply to special training and staff assignments in a given area where more than one employee is interested. In Pennsylvania, the two years of unionization of the state probation and parole officers has not produced any unusual improvements in direct compensation benefits, which remain relatively low in comparison with other industrial states.

4.04 PROBATION SERVICES IN LOS ANGELES COUNTY

The Los Angeles County Probation Department has long been regarded as one of the leading probation departments in the nation. Its operations involve over 5,200 employees, including both adult and juvenile cases, making it the largest such agency in the United States including all levels of government. It also operates a variety of juvenile institutions.

The 2,100 deputy probation officers (DPOs) have had an employee association for approximately 25 years. With the other departmental bargaining units, there is a total of 23 collective bargaining contracts involved. Currently, AFSCME represents the DPOs and most other groups, but the DPO supervisors belong to the "Supervisory Deputy Probation Officers Union" which is a unit of the County Employees Association.

In this large governmental bureaucracy, which also involves the central staff agencies of the county and particularly the county personnel department, management-union problems are extraordinarily complex, and union contract administration imposes continuously expanding demands on management resources. For example, since the union contract in 1964, three additional positions were required in the department personnel office for increased union contract-related workload. The principal problem areas are:

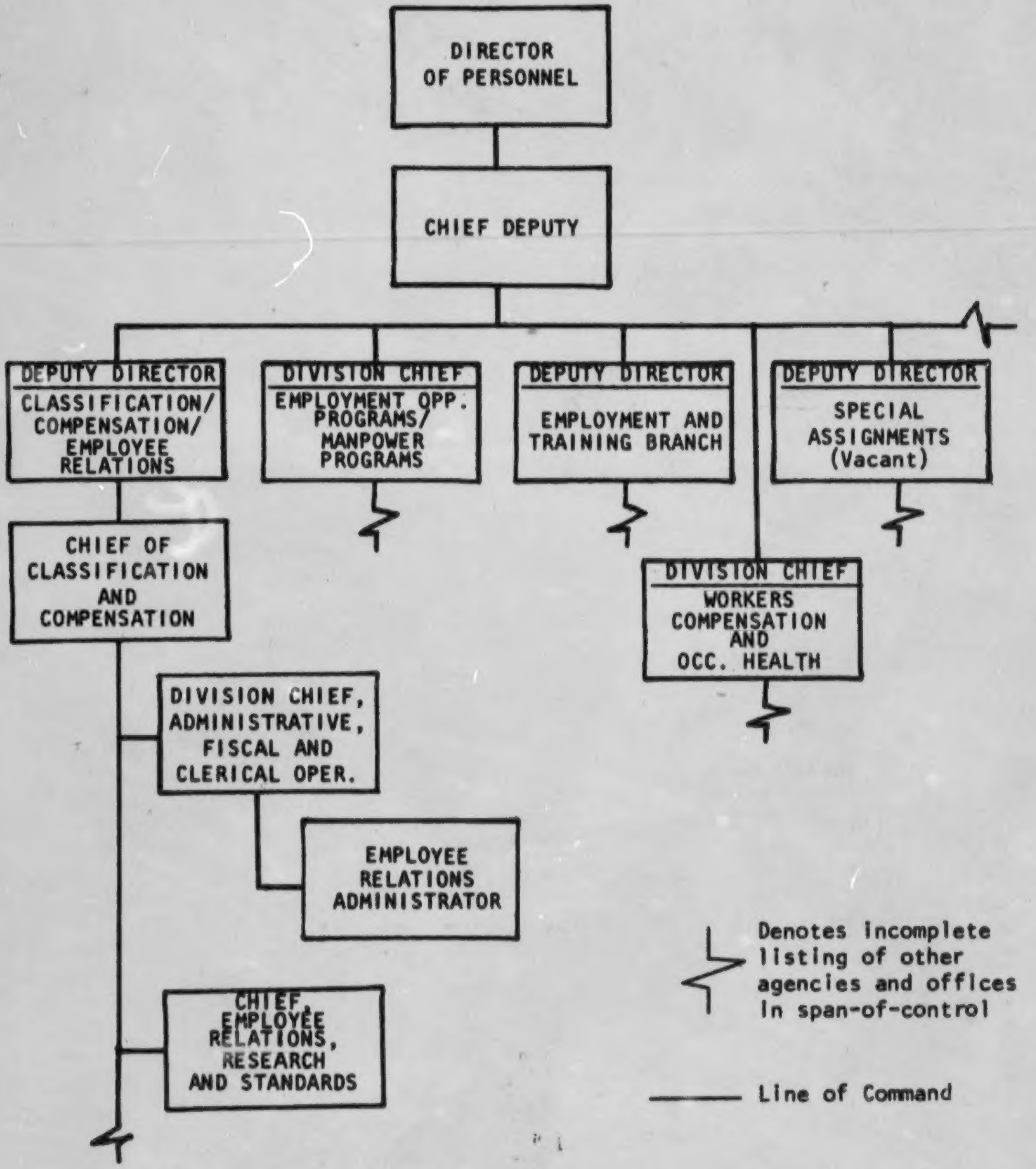
1. Seniority transfers from less to more desirable parole district offices;
2. Provisions for appointment of women (every third appointment) and minority probation officers (varies);
3. Political end runs successfully executed by union leaders to the members of the County Board of Supervisors (the unions have already given testimonial dinners for two members);
4. Disciplinary action can be grieved through both the civil service system and to compulsory arbitration through the union contract;
5. Separate, county-wide negotiations with unions over economic issues and between each department and union on working conditions;
6. Efforts to secure legislation and other commitments through contracts to "protect the current probation officer role" (in the face of the recent state policy to curtail parole to a limit of one year of supervision).

A description of the Los Angeles County Probation Department is less revealing of the problem than consideration of the organization of the County's central personnel agency, the director of which reports immediately to the Board of Supervisors and to the Civil Service Commission. The organization chart of this Department provides no reference to its relationship to the Chief Administrative Officer whose management functions presumably are primarily in the fiscal area--that is, budgeting, accounting, revenue, and the overseeing of disbursements. The key positions in terms of labor relations in this agency are shown in Figure 6. The particular factors to highlight are: (1) Unions provide political support to members of the Board of Supervisors and have ready access to those members. (2) The Board of Supervisors has both executive and legislative powers. (3) The Board of Supervisors can formally and informally through individual members give policy directions to the Director of Personnel. (4) The Director of Personnel has both collective bargaining powers and the direct power to implement many negotiated items involving classification and compensation. And (5) primary responsibility for employee relations is carried out by a person four levels below the Director of Personnel. This could severely restrict the teamwork of central staff where several deputy directors, branch chiefs, and division chiefs are involved peripherally in the collective bargaining process. It may be unfortunate that the Chief of Employee Relations, Research and Standards, does not report to the Employee Relations Administrator and to the Director of Personnel.

In extensive interviews with probation and central personnel executives and union officials, nearly all reported that the system was operating well, that they had no great problems, and that most

FIGURE 6

KEY POSITIONS IN THE FIELD OF LABOR RELATIONS


DIRECTOR OF PERSONNEL
CHIEF DEPUTY
DEPUTY DIRECTOR
CLASSIFICATION/ COMPENSATION/ EMPLOYEE RELATIONS
DIVISION CHIEF
EMPLOYMENT OPP. PROGRAMS/ MANPOWER PROGRAMS
DEPUTY DIRECTOR
EMPLOYMENT AND TRAINING BRANCH
DEPUTY DIRECTOR
SPECIAL ASSIGNMENTS (Vacant)
CHIEF OF CLASSIFICATION AND COMPENSATION
DIVISION CHIEF
WORKERS COMPENSATION AND OCC. HEALTH
DIVISION CHIEF, ADMINISTRATIVE, FISCAL AND CLERICAL OPER.
EMPLOYEE RELATIONS ADMINISTRATOR
CHIEF, EMPLOYEE RELATIONS, RESEARCH AND STANDARDS
Denotes incomplete listing of other agencies and offices in span-of-control
Line of Command

problems mentioned were related to some other office or official's functions in this process. Management in probation feels that the major problem has to do with the seniority bidding system which was ". . . given away with the first contract." Since problems in employee relations appeared to be very difficult for officials to discuss, it is likely that they were much greater than stated.

IMPACT

Robert N. Kharasch described the problem with his Law of Invariable Accomplishment: "An institution will always accomplish its internally-perceived purpose."[2] In this case, the purpose of the agency seems to have been largely directed toward its bureaucratic survival through employee relations at the expense of its responsibilities to clients and to the committing criminal and juvenile courts.

Not only in the Los Angeles County Probation Service is there considerable evidence of the "crushed individual" where ". . . the machinery of state is seen as grinding remorselessly and mechanically to destroy all resistance to--what? Resistance, simply, to the further operation of the remorseless machinery of the state."[3]

The political powers of the unions, combined with the phalanx of "neutral" operatives and minor bureaucrats in the public agencies, can produce weighty conflicts for the goal-oriented professional administrator. He, too, needs the job; he has financial ties to the agency's retirement plan; and his savings often are modest. Our system of government has checks and balances seldom discussed in management literature. In other words, when political or higher executive directives contradict sound principles of management, public accountability, or professional convictions, the "classic" administrator refuses to carry out the orders by resigning. Most, however, fail to do this. Rationalization is ascendant, and the compromised executive becomes even more ready for the next compromise.

The public employee unions have become a major factor in this moral issue. The successful administrator is prepared and equipped to work and live at the confluence of political and executive powers. Seldom, however, has resistance to political pressures been so obviously dangerous to management's own future as it is under conditions of employee organization for collective bargaining.

A high priority must be placed on government planning for the future, under employee collective bargaining, to protect the integrity of the professional administrator and to more firmly establish in administrative processes a primary focus on fulfillment of the agency's purpose.

References

1. GERR, No. 659 (31 May 1976), p. B-18.
2. Robert N. Kharasch, The Institutional Imperative: How to Understand the United States Government and Other Bulky Objects (New York: Charterhouse Books, 1973), p. 105.
3. Ibid., pp. 92-93.

CHAPTER V

FUTURE ISSUES

American public sector unions may be thought of as being in an adolescent period of their development, while the mature state corrections agencies are in "future shock"* from their initial experiences with collective bargaining. Both may be expected to change considerably over the next decade and many forces and events will help to shape these changes.

There is no way to predict the effects of all the changes which will occur in both state corrections and the correctional union. While the future of the two are interdependent, there are other relationships which influence the state correctional function:

- The economy of the United States and elsewhere;
- The crime rate;
- Evolution in law enforcement and judicial policies and procedures;
- New correctional policy by legislation and court decisions;
- Serendipity or unexpected new conditions (including political developments).

What can be expected is that many problems or issues in this field will be resolved--some for the first time and others as a planned change from current policy or practice.

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*The speedup of technological and social change that causes severe personal and organizational dislocation. Described by Alvin Toffler in Future Shock, Random House, 1970, New York.

Ten Future Issues - Summary

1. How shall the need for prisoner representation be handled?

2. Will service-wide unions be recognized and how will that affect both collective bargaining and the state government?

3. How can a realistic, workable plan be devised for the necessary discipline and discharge of unsatisfactory public employees?

4. (a) What mechanisms can be used to efficiently reorganize and reshape public agencies where the elimination of large numbers of jobs is involved? (b) How can policy options be kept alive and encouraged to permit the use of service delivery systems based on contracted services to other governmental agencies and the private sector?

5. Can equal employment opportunity and affirmative action programs continue until they are no longer needed?

6. Can the role of the union in formulating correctional policy be clarified? Can a share of accountability for results be fixed on the unions?

7. How can the productivity of state corrections be substantially

and continuously improved? Will unions help or hinder these efforts?

8. When and how will public employee unions be subject to public fiscal accountability? Public audit? Disclosure of contributions of financial and in-kind services to political candidates, officeholders, or political parties?

9. How will unfair practices of labor and public management be defined and reported and appropriate sanctions imposed on the organizations or agents involved?

10. Will management dispute resolution procedures be instituted to enable the operating agency department head to appeal matters negotiated by the state labor relations executive?

Future Issues - Commentary

1. How shall the need for prisoner representation be handled?

While prisoners probably should have the benefit of a collective bargaining system for representation of their rights, benefits, and working conditions, this may not necessarily be beneficial to the prison or to prisoners in the short run. But in the long run, accommodations must be made. It is hoped that existing correctional employee unions will be constructive in devising an independent prisoner representational plan which is relatively compatible with union and prison management interests. (The alternative, unfortunately, is to allow the encroachment of lawyers and ombudsmen into an ever-expanding adversary role in prisoner representation.)

2. When will service-wide unions be recognized and how will that affect both collective bargaining and the state government?

In some states, one union (AFSCME) already includes more than 70% of all state employees in its membership, but in various bargaining units. In such cases, negotiations involving the dominant union normally set the outer limits of what the minor unions can obtain from negotiations. These states are virtually under a service-wide union similar to its precursor--the state employee association--and these unions would be only nominally stronger if they had total representation rights. It is speculated that these giant unions necessarily would be more responsive to overall state needs. On a unit-by-unit basis, certain functions or services are given more attention than others by virtue only of the skill and power of the union which represents them.

3. How can a realistic, workable plan be devised for the necessary discipline and discharge of unsatisfactory public employees?

This remains a chronic problem of public administration. As more and more persons are employed for lifetime positions in public service, it is essential to raise the quality of their performance over time. Even where it can be demonstrated that managerial neglect has resulted in large numbers of incompetent persons passing their probationary periods and acquiring civil service status, as well as union membership, permanent immunity from reasonable performance standards should not be provided--as it is now.

4(a). What mechanisms can be used to efficiently reorganize and reshape public agencies where the elimination of large numbers of jobs is involved?

In the private sector, ineffective and inefficient organizations go out of business. In government, the life of an agency seldom depends on quality of performance. The high costs of government reflect, to some extent, an irrational preservation of those agencies which should be allowed to die or to go out of business. The state could make arrangements for retraining and placement assistance to employees displaced as a result of agency "death".

4(b). How can policy options be kept alive and encouraged to permit the use of service delivery systems based on contracted services to other governmental agencies and the private sector?

Generally, contracting out of governmental services is anathema to the public service unions. However, interests seeking more productive and responsive governmental services should not be prevented from evaluating and selecting on that basis the best means of service delivery.

5. Can equal employment opportunity and affirmative action programs

continue until they are no longer needed?

These programs experience greatest difficulty in state prison organizations and they must be continued longer to achieve the desired penetration of under-represented groups.

6. Can the role of the union in formulating correctional policy be clarified? Can a share of accountability for results be fixed on the unions?

The problem with a union's effective representations with regard to a public policy matter is that the union is not accountable for results. For example, union representations to the effect that prisoner excapes will be reduced by legislatively authorizing substantial new staffing levels should be tested by experience. Practices should be abolished where the new expenditure has been found to be needless.

7. How can the productivity of state corrections be substantially and continuously improved? Will unions help or hinder these efforts?

This question presumes that the goal is union cooperation in achieving increased productivity. Progress will be difficult if that cooperation is lacking. Private sector arrangements between management and unions have tended to provide a two-level arrangement for planned reduction in manpower demands. For example, as the maritime shipping industry went to container loading of ships, the longshoremen and warehousemen unions received: (1) the benefits of temporary levels of overstaffing in the transition and special retraining and severance compensation for those laid off; and (2) a special benefit fund created by annual payments by the companies of a share of the cost reduction realized due to the new loading system.

Would it be feasible for the state to "buy out" obsolete agencies by some equivalent arrangements for the employees displaced?

8. When and how will public employee unions be subject to public fiscal accountability? Public audit? Disclosure of contributions of financial and in-kind contributions to political candidates, officeholders, or political parties?

It would appear that greater disclosure of political activity and lobbying by unions will evolve on a state-by-state basis. Similar activities by other lobbying organizations have come under government regulation and public disclosure to varying degrees in most states.

National legislation also may be anticipated in this area as a part of a national public employees labor relation act.

Unions have many concerns about such regulation and control, particularly where governmental review of their affairs may be used to harass the unions and frustrate their legitimate relations with employees.

9. How will unfair practices of labor and public management be defined and reported and appropriate sanctions imposed on the organizations or agents involved?

Unfair practices occur with sufficient frequency to be recognized as a problem. However, the nature of political relationships serves to encourage de facto amnesty for such practices once the disputed issues are resolved.

It would seem that the public interest would be better served by establishing a means whereby reporting to the public employees relations commission or other agency for review and disciplinary action regarding an unfair, improper, and perhaps illegal activity which may take place during labor negotiations and disputes would not depend on the judgment of a state executive.

This might obtain by a statutory requirement that all actions which are illegal (by definition), such as an illegal employee strike, regardless of how the dispute is resolved, should be investigated and brought before an appropriate court or commission. Without such regulation, blatant violations of the public laws by public safety employees result in little or no disciplinary action against the employees or unions involved once a new agreement or settlement is reached between the disputants. It is particularly distressing in the corrections field for prisoners to observe de facto approval of the state for the illegal acts of striking prison employees: striking, destruction of public property, providing false reports (in "sick-outs"), conspiracy, extortion, or misappropriation of government property.

10. Will management dispute resolution procedures be instituted to enable

the operating agency department head to appeal matters negotiated by the state labor relations executive?

Many state governors may be unwilling to referee disputes between the employee relations director and all of the line agencies of the state. Neither the employee relations director nor the employee union officials will want to encourage the practice, unless equal appeal rights for the unions are provided. If that were the case, the governor would become the state negotiator. The problem thus appears almost insoluble. The solution is a delicate matter, but appropriate arrangements must be made to correct the deficiencies in a sometimes divided executive branch. Multi-unit bargaining by a single management representative is a logical, efficient means of administering the process, but the state negotiator needs to function in a "chief of staff" role, with the department heads comprising the staff, and not as the governor's exclusive agent in this activity.

EXPECTATIONS FOR PUBLIC EMPLOYEE RELATIONS REFORM

It seems likely that some additional regulation of collective bargaining in the public sector will occur. The forms or frequency of abuse which have occurred do not seem to diminish with the passage of time or growing experience with state-employee union relations. Court rulings and future legislation prospects are unusually dynamic.

Even if diminishment of criticized practices can be expected in the future, the public losses may be irreversible. For example, a "horse-trade" of increased state contributions to an employee pension plan for a no-pay increase contract may provide a thousand times greater benefit to the employees and will not be subject to change in the future.

The present situation protects the fruits of illegal negotiating procedures to the same degree as those obtained by a proper or legal negotiating and ratification process. There are too many incentives for the concealment of state-union contract deals. At the moment, where they are already established as a major representative of the state's employees, the unions' power can be greater in their limited area of interest than that of the governor or the legislature and can be used to the special advantage of certain groups of public employees (and to the disadvantage of others)--all usually without public visibility or accountability for results.

A System Going Out of Control

In state corrections the public unions have created greater power for correctional officers than other prison employee groups. Such power sometimes is used to the disadvantage of state prisoners and the criminal justice system as a whole. The abuses of correctional union powers seldom are widely publicized since those who perceive them are silent because they are vulnerable to retaliation by the unions (acting through the governor or other officials) and those who cooperate with the unions are rewarded for their efforts.

In other words, the state's management negotiating team at the outset is always a direct and indirect beneficiary of many of the benefits and working conditions under negotiation for the employees. At the same time, the chief executive (governor) and the top state labor relations officers too often are beholden to the union leaders. Additionally, the traditional checks and balances of state government have been eroded by the direct influence of public labor union leaders on legislators. While many legislators do not actively seek labor approval, they are reluctant to incur labor's opposition.

Remedy

It is time to organize and convene the national commission necessary to commence the studies and considerations which would lead to the introduction and passage of a national public employee relations act. Such legislation would be designed to authorize public sector collective bargaining and to define processes and standards more unique to the peculiarities of government whose integrity and ability to make and carry out public policy is paramount.

The Complexity of Management and Systems Growth

The field of corrections--embedded in both the complex relationships of the criminal justice system and the larger systems of the urban community (family, employment, health services, education, and welfare)--copes poorly with the dynamics of 1970's inflation, recession, rising crime rates, greater skepticism of correctional efficacy, rapidly increasing prisoner populations, and public employee unionism.

This point is close to Alvin Toffler's discussion of the emerging "Eco-Spasm":

> In even the simplest division of labor workers must expend energy on two different functions: one is actually doing the job; the other is maintaining liaison with others who participate in the process. The ditchdigger, the weaver, the spinner, the longshoreman--not to mention the research chemist or stress engineer--must devote some time and energy to this liaison. The digger may say to his buddy, "Hey, a little deeper on the left" or, "Time to get started again!" Even these abbreviated, seemingly simple messages are absolutely essential to coordinating the work of any group.
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> As the society grows more differentiated, the balance between these two components of work--"production" and "liaison"--shifts, and more energy must go into the liaison component, which is why we have today so many millions of people racing around with pieces of paper--clerks, expediters, supervisors, assistant vice-presidents, coordinators, and bureaucrats. More and more human energy must flow into the process of information exchange in order to maintain equilibrium in the work system as a whole. As a result, there is a fundamental change, not merely in the occupations of people (a decline in blue-collar employment, an increase in white-collar), but a shift in the kinds of personalities preferred in the work force (people who "get along" with others).
>
> This process of white-collarization and the push for what David Riesman termed "other-directedness" are both related, however, to rising levels of social, as distinct from purely economic, diversity. Advancing technology requires more labor division; this, in turn, fosters variety in the population. But simultaneously the new profusion of life-styles, subcultures, ethnic groupings, regional specialties, recreational "affinity groups" all generate demand for a proliferation of varied goods and services.
>
> This demand for varied new products and services brings with it a proliferation of varied new work processes, alternative work routines for both blue and white collars, so that we wind up with more differentiated, individualized people doing more diverse tasks. And this vastly escalates, once more, the costs of coordination, laying a hidden

> tax, as it were, on the economy and contributing to whatever inflationary pressures arise from other sources. The problem involves more than money, however; it involves control as well. Thus...it becomes increasingly difficult to model the labyrinth of variables in such a web of social and physical systems and any system that cannot be modeled cannot be managed...
>
> It may be getting harder, in both human and in economic terms, to get anything done. It is as though there were an extra barrier of inertia to get through--a rise in internal friction that translates into inflationary cost. Thus, the system, just by trying to hang together a little longer, finds itself faced with a new economic dilemma...The proportion of gross national product that must be spent in mediating conflicts, controlling crime, protecting consumers and the environment, providing ever more comprehensive bureaucratic coordination, and generally trying to maintain 'social homeostasis' begins to grow exponentially.*

In these broad terms, the problems of government, not corrections alone, seem beyond comprehension or resolution in the future. The public employee unions, however, are not the cause of the problem but a significant factor in dealing with it.

Administrative Problems; Political Answers

The concerns of all Americans with the problems of crime, justice, and corrections know no political home. In running for elected offices, members of both major parties have devised attractive policies and postures. However, such policies have very little correlation with post-election affairs of either the executive or the legislative branch.

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*Alvin Toffler, The Eco-Spasm Report, pp. 30-33, Bantam Books, March 1975.

Currently, the reform components of both political parties are almost always found at the left of the mainstream. Reform, it seems, is not always radical or "socialistic". According to socialist Michael Harrington, "...every change in the system has to be presented primarily as a prop for the status quo. The inherent value of a reform--the fact that it *is* a reform--has to be carefully ignored. The obligatory conservative rationales for liberal ideas then influence the actual draft of legislation and the practice of government policy.*

National labor organizations are active in electing liberal, Democratic party candidates and in supporting more collective bargaining rights (private sector and public) and the Humphrey-Hawkins Bill to create a national economic planning capability and foster a national full-employment program. At the same time, both liberal and conservative state correctional administrators are being thwarted by the "status quoism" of state and local unions. The only direction that corrections may go by consensus is to reform the reform developments: Discontinue efforts to reduce the unnecessary use of incarceration; stop expanding the resources for community supervision and treatment of offenders; and decrease the use of existing community resources, including contracting for certain correctional services. The thrust of every state-union contract is to expand the institutional security elements of corrections while increasing its costs of operation and decreasing the areas of opportunity for future changes designed to improve the

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*Michael Harrington, "Two Areas for Socialism", *Harpers*, October 1976.

performance of the state correctional system.

Aspects of this situation are paradoxical. Union members suffer as many losses to criminals as any other social group, except the lowest income ghetto residents. Also, union members pay a proportionately higher percentage of their income in taxes than any other employed group. Still, the results of their state collective bargaining efforts to date may have reduced the capacity of the correctional services to prevent future crime by proven and committed offenders. They also have increased the costs of financing the correctional services, which appear to correct less and less and actually may increase crime by previously incarcerated persons.

The moral of this commentary? That planning is not planned. That any attempt to conceive a rational public employee relations policy must be one which is compatible with the development or evolution of policies and practices which are more effective in meeting their social purpose. The overriding fact is that "...it is not an idea which penetrates and shapes reality when its time has come. It is a process in which the major actors--politicians, workers, conservatives and liberals, intellectuals and the rest--behave in a manner that is predictable after the fact but difficult to anticipate. There is a rationality in the confusion...described. The plan is determined, not by the dictates of social reason, but by the power configuration of the society..."*

Such realizations, considered with the empirical findings of the

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*Ibid.

MERIC research in 16 states, tend to provide independent support to Sam Zagoria's conclusions in 1972 on the future of collective bargaining in government:

> While there will continue to be large islands of nonrepresentation and numerous subjects verboten for discussion, the growth pattern of public unionism of the 1960s will continue unabated in the seventies. This development will have far-reaching consequences for public employers, public workers, and the public generally. The pattern of government employer-employee relations, once like father to son, is more likely to become that of partners, usually pulling together in mutual interest, but periodically falling apart as bitter adversaries. For the old-time public administrator, the change will appear so drastic, it will seem like a revolution in traditional government.

Public employee unions seek to be and will soon become full partners in state and local governmental operations in those functions where direct services are provided (e.g., education, police, hospitals, prisons) as distinct from control and regulatory functions (e.g., state revenue and finance, banking, insurance, real estate, vocational standards, land use planning, and economic development). These powers are concentrated in those government services which not only directly affect the most people, but also comprise the major portion of total state expenditures. The unions' powers include the selection and tenure of the top executive gubernatorial appointments. Yet the unions seem to have no political accountability for the consequences of their policies and actions.

Political Reaction

It is too soon to assess the long-term impact of alleged union excesses in New York City and San Francisco, where union activities are blamed for great economic harm to the city governments through their negotiation of excessive benefits and political activity to effect them through the process of legislative ratification. Much of the reaction may have been misdirected to a curtailment of the scope of negotiations (e.g., confine pay negotiations to prevailing pay survey data from independent sources), whereas the more logical response would be to deal with political and management processes which obviously were inadequate. As has been previously recommended, state union-enabling legislation should be amended to provide for more public visibility of the process: What has been negotiated, what are its costs and other effects and who approved it? (See Issue 1.04, Chapter 1, for discussion of this topic.)

While it may seem a serious problem with which a democratic government must cope, public agency collective bargaining ultimately may prove to be the greatest political reform since the United States Constitution. The government--from its political leadership and representatives through its administrative organizations for execution of public policy--may become responsive through the greater participation of the nation's workers in these offices. In corrections, collective bargaining has raised the financial costs of prisons to a level more close to what they should have cost many years ago. Now both the funds to be saved by successful offender diversions from prison, early release, and decriminalization of some of the so-called "victimless crimes", and the full costs of correctional programs certainly is encouraged by cost/benefit analysis where costs keep increasing and benefits or performance continue to decrease.

The Relationships of Private and Public Unions

The demise of the union in private industry may not be as indicated--the emergence of public ownership of more private production and heretofore non-governmental services. A more likely outcome, it is speculated, is union and employee ownership of these private firms. The unions, through their pension fund investments, own an increasingly large portion of the largest corporations in America. Additionally, the rapid growth in the 1960's and 1970's of profit-sharing plans via stock distribution to employees accelerates.

If the unions together owned more than 50% of a private corporation, it would have great difficulty in doing more than it does now when its ownership is involved; it does not vote its stock. To do otherwise would bring about a situation in which the unions would be negotiating with themselves and with other unions. For example, hypothetically, how would the majority union--say, the United Auto Workers (UAW)--in negotiating with General Motors which it owns with other unions, bargain in "good faith" with GM management and the other subsidiary unions? The interests of the union to (1) preserve the viability of the organization it depends on as a provider of jobs and (2) negate the impact of cost-of-living changes on workers' real income, probably would lead them to provide a corporate management independent of the unions.

In the public sector, how close the unions are to having the power to "pull the string" on the state executive and many in the legislature is speculative. However, the unions are private organizations and competition continues between them and with local independent unions and employee associations. Union power, therefore, finds itself in the uncomfortable position of not only negotiating with itself, but also eventually being held accountable by the majority of workers (and others) who are not organized, for high taxes and the inequity of public workers' compensation and benefits when they grossly exceed that of non-governmental workers.

LEGAL AND LEGISLATIVE OUTLOOK

The United State Supreme Court made a fuling in 1976 in National League of Cities v. Usery that has rocked the field of public sector collective bargaining. In effect, this ruling found unconstitutional the provisions of the Fair Labor Standards Act (FLSA) which were previously held to apply to state and local government--in this case, minimum wage standards.

Michael S. Gordon describes National League of Cities v. Usery, in which the court held that Congress exceeded its authority under the Commerce Clause of the Constitution, as casting grave doubt on the ability of the Federal Government to regulate state and local government pension plans under the Commerce Clause. This uncertainty could in turn create a question regarding the jurisdiction of Congressional labor committees to write such legislation as the Employee Retirement Income Security Act (RISA) for public employee plans. These committees up to now have "sidestepped the explosive issue" of public employee pensions. ERISA, enacted in 1974 over private pension plans, exempted government pensions from the law and designated the matter for further study.*

In the past year several significant public labor law issues were resolved or created by court decisions and some cases now before the court may result in others.

The American Bar Association held an Institute on Labor Relations Law in the Public Sector, November 18-19, 1976, in Chicago. Selections from the many presentations, as produced in the Government Employee Relations Report*, are presented below.

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*Michael S. Gordon, "The Politics and Perils of Reforming Public Employee Pension Plans", Employee Benefits Journal, Fall, 1976.

*GERR, No. 685, B-7-18, Nov. 29, 1976, Bureau of National Affairs, Washington, D.C.

Harry T. Edwards, Harvard Law School:

"...despite the 'certain unique problems' associated with collective bargaining in the public sector, most participants in the field accept bargaining as a reality. And they are now reappraising this reality...in light of the recent periods of fiscal crisis."

That reappraisal stems from several causes and effects, including the right to strike debate, which continues to simmer. However, strikes have become a cost-saving phenomenon during fiscal crises because salaries don't have to be paid and there is a larger labor force from which to draw replacements.

Theodore Sacks, general counsel Michigan State AFL-CIO

Re: National League of Cities, "Who would have suggested that in this Bicentennial Year the Tenth Amendment would be born again?" In recent years Congress has enacted major legislation affecting the public sector--1966 Amendments to the Fair Labor Standards Act, the Economic Stabilization Act of 1970, Title VII of the 1964 Civil Rights Act, 1974 FLSA amendments and the Equal Pay Act and Age Discrimination Act.

"Congress has long granted funds to the states, and nobody supposed there was a serious constitutional problem.

"Both sides are writing with considerable vigor and writing with considerable doubt as to where we go from here." Further, decisions issued subsequent to the National League of Cities case have upheld the 1972 extension of Title VII to public employees. District court decisions since that case have held that the Equal Pay Act is not affected by National League of Cities. That decision, however, "clearly precludes" congressional regulation of minimum wage and overtime provisions under the commerce clause and would appear to also "equally preclude" state public sector bargaining laws. What the decision means for collective bargaining in the public sector is "not clear".

Post-National League of Cities, there is the question of whether Congress can exercise its constitutional spending power by conditioning the receipt of money by states on their meeting certain standards. Historically, Congress has been given "very broad authority" under the spending clause in Article I of the Constitution...until *National League of Cities* the commerce clause "was believed to have greater force" than that granted under the spending clause.

...cities and municipalities will now, in effect, ask for a reversal of the decision, because they are "happy" to get federal funds.

"There are certainly going to be very practical pressures in a direction contrary to *National League of Cities*." The decision itself "reflects a drastic change" in the Supreme Court, and where it will go from here is "questionable".

Donald E. Elisburg, general counsel for the Senate Labor and Public Welfare Committee:

National League of Cities is unprecedented as it affects labor standards in the public sector. Options for legislation in public sector bargaining "do exist," but they are apparently "somewhat limited." An outright extension of Taft-Hartley to the public sector or the creation of a separately administered law "would require the Congress to walk a slippery constitutional road."

Congress could enact a series of standards for state and local government agencies, but unless that approach to bargaining is an "advisory" one, it is not clear how the *National League of Cities* decision can be surmounted with the court as it is constituted.

Another approach would be to use the Congressional purse strings--to condition receipt of revenue sharing funds on state and local governments' meeting certain standards.

"Thus, the renewed interest in public sector bargaining will likely be focused on a series of procedures that state and local agencies would have to follow in order to qualify for the federal funds."

Congressional proponents of public sector bargaining still believe that some form of standards is necessary to eliminate the "hodge-podge" of laws. Any statute would have to include provisions for enforcement, scope of bargaining, unit determinations, and unfair labor practices. None of these provisions would be controversial, "once the decision has been made to strike, and if so, for whom.

"I would venture to say that any congressional enactment in the form of standards approach would inevitably provide for some form of judicial relief with respect to limiting or prohibiting work stoppages in the public safety labor disputes.

But Congress is not at present "necessarily sympathetic" to passage of public sector legislation. And in view of *National League of Cities*, it "hardly matters" that President-elect Carter, rather than President Ford, will be occupying the White House.

The outlook for "some form" of public employee legislation is thus "difficult but not hopeless."

Constitutionality of Compulsory Interest Arbitration

June Weisberger, University of Wisconsin Law School:

There is an "apparent lack of current activity on the judicial front," reflecting in part the Supreme Court's *National League of Cities* ruling. That decision "has given renewed comfort to supporters of broad sovereignty concepts."

There are three basic approaches to the constitutionality of such legislation: (1) the "old-line traditionalist" view that treats any type of public sector bargaining as a threat to public management sovereignty; (2) new style traditionalists, who believe it's necessary to have a strike threat to make bargaining work in the public sector, and thus oppose compulsory arbitration schemes; and (3) experimentalists who like to explore all possibilities of binding third-party arbitration and believe in interest arbitration as "a matter of enlightened public policy."

Harold Newman, director of conciliation for the New York Public Employment Relations Board:

While the best type of settlement in collective bargaining in the public sector is obviously a voluntary one, compulsory interest arbitration is valuable and amounts to "nothing new" in a situation "where the parties are ready for extreme unction or something else."

Public sector bargaining statutes provide for a "great variety" of compulsory arbitration schemes. And studies have shown that the kinds of arbitration awards are strongly influenced by the types of procedures which precede them. In addition, the proportion of cases going into interest arbitration and the "ability or willingness" to settle theimpasse before that point depends on the kind of arbitration that awaits the parties. In New York, fact finding is treated as a procedure of "special importance," and arbitrators are encouraged to use the arbitration hearing as a "show cause" procedure.

New York "seeks to discourage the use of interest arbitration just because it is there. If there are 18 steps in the impasse procedure they'll use it."

He is "convinced that the only effective fact finding" takes place when the fact finder has "mediated directly or by osmosis." And fact finding itself "is a misnomer," because "the parties know what the facts are." Rather, fact finding serves as a "lightning rod for certain issues" in dispute resolution.

Binding interest arbitration should be reserved until other conciliation methods fail and "shouldn't be used unless it is the last arrow in the quiver."

Responsibilities in Arbitration

Arnold M. Zack, Arbitrator

Arbitrators in public sector disputes usually spring from "the old guard private sector," and have had long experience as contract interpreters, or they are some of the "new breed of public sector-spawned mediators and fact finders." Both types have been "steeped in acceptability" and may be found "pushing the parties toward voluntary settlement.

"The conventional wisdom dictates that the parties at the hearing will present all the pertinent evidence through testimony and exhibits; that the arbitrator will fill in the few gaps in his own knowledge of the situation by incisive questioning of the witnesses and challenging of the documentation; that the parties will supply concise, competent, poignant, and thoroughly persuasive briefs to turn the arbitrator's head in their favor; and that the arbitrator having been given, and having understood this mass of information, will then prudently examine the respective positions of the parties. Then, by involving ability to pay, comparability, cost of living increases, or other wage criteria, he will apply that standard which he finds to be most applicable to the situation and most compatible with his statutory mandate. The parties have recognized the ultimate wisdom of this criterion, will then hail the neutral and his award for a masterful job of conflict resolution, drop their picket signs, unlock the public buildings, and go forward hand in hand to a new era of economic and emotional reapproachment.

"I suggest that the inadequacies of the arbitrator when coupled with those of the parties result in a practice of arbitration that is quite different from what the public expects."

But the practice of arbitration strays from the expectations. The parties are responsible for providing the data, but to the neutral there are sometimes so many deficiencies in the presentations that the result is a "warped view"--a gap between what is provided and what is needed. The parts of a budget that are relevant to the dispute may be omitted from the data, the parties may provide lists of different cities to support their arguments, they don't challenge each other's data although given the opportunity, and "neither trust the other with facts" such as rates in nearby cities or cities of equal size.

Furthermore, the parties are often lax in fulfilling their share of responsibility for presenting information, and seem to have "naive assumptions" that the arbitrators have other sources of information about the dispute. In such cases, an arbitrator "might wrongly conclude" that the parties don't understand the issues, either. It would be helpful if the parties met beforehand to compare their information, but because of "our adversary tradition," those in the public sector "seem doomed to continue with a litigants' orientation."

Arbitrators are thus faced with conflicting standards. Some neutrals are opposed to issuing an award--which they feel is equitable--because they know it will stimulate a strike, and thus they render an award that is equally acceptable to both parties. Besides the problem of acceptability versus equity, arbitrators must consider comparability versus ability to pay. This is an increasingly crucial question because of the current economic crunch.

Finally, in the public sector "there is the gnawing question of whether the neutral bears a greater responsibility than mere resolution of an impasse between the parties." Arbitrators are required to weigh the public interest against the demands of reaching a settlement, and eventually must "wrestle with the conflicting principles and come to a conclusion that he feels appropriate."

Duty to Bargain

R. Theodore Clark, attorney:

Reference to "other terms and conditions of employment" have been the most troublesome phrases in resolving negotiability disputes. Many statutes which recognize that phrase also provide for management rights that are excluded from bargaining. The issue of class size illustrates the problem, because it is "certainly a working condition" but it also constitutes an important element of educational policy.

This conflict/overlap problem has been resolved by classifying a subject as mandatory if it is "significantly" related to wages, hours, and other terms and conditions of employment.

Another approach to the problem--the balancing standard--takes into consideration the competing interests of the parties.

The balancing test "acknowledges that both parties have significant interests at stake and that these competing interests should be balanced to determine how a proposed subject for negotiations should be classified."

There is an "emerging national conceptual framework" for determining scope of bargaining issues, and the "key to this framework" is the establishment of a balancing approach to resolve overlap and conflict situations.

Reginald Alleyne, chairman of the California Educational Employment Relations Board:

Many tensions in the emerging public sector are manifested at the bargaining table--where the public employer may offer its "first line of resistance" to unions. In the public sector, negotiations implies the sharing of power by employers, and the discussion of wages and hours encompasses many questions of negotiability which are more difficult to resolve than in the private sector because of the presence of other legislation, such as educational codes and budgetary statutes.

Management rights clauses that have been included in public sector bargaining legislation tend to create more problems than if they hadn't been included. The Wisconsin statute is "typical" in its language, which spells out with "specificity" a list of management rights. Some sections in that list contain "exceptionally broad language" that tends to "swallow up the bargaining obligation."

In addition, bargaining scope may be limited by statutory references to other laws which cannot be superseded by the collective bargaining statute. In Pennsylvania, the parties "must omit anything" in conflict with other statutes or home rule charters from their negotiations.

Robert G. Howlett, chairman of the Federal Service Impasses Panel and former chairman of the Michigan Employment Relations Commission:

Since dollar items are excluded from federal sector bargaining under the executive orders, negotiations focus on such topics as promotions, checkoff, contracting out, grievance and arbitration, parking lots, and desk locations. Promotions, which are a "significant" subject of discussion in private sector bargaining, are basically reserved for management under Executive Order 11491, and as a result the Federal Labor Relations Council, which administers the order, "has necessarily restricted" bargaining on promotions. However, the Council has distinguished between the decision to promote and the procedure of promoting, and has decided the latter may be negotiated. It is "a fine line between the two."

Union Security

Howard C. Hay, attorney:

There are a number of pragmatic reasons for a public employer's opposition to union security.

However, none of the societal interests--including the fear that unions will grow politically and successfully exert pressures on legislative bodies--raises the First Amendment question.

The Supreme Court has just heard oral argument on the constitutionality of an agency shop provision in the Detroit school board's contract with the Detroit Federal of Teachers. There is presently a "well-established premise" that public employees cannot be discharged for exercising their constitutional rights. That concept produced a two-part test by which such cases are analyzed. The first question posed is whether the discharge resulted from the exercise of constitutional rights and if it did, the second question asks whether the discharge was an infringement on employee rights that was justified by state interest. "Any government compulsion" to force an employee to join a union is a violation of the First Amendment--as is a state prohibition against joining a labor organization."

As for the agency shop issue now before the Supreme Court, the court "will have no difficulty" in holding that "the state's compelling financial contributions to a labor organization does infringe on First Amendment rights." The conflict will focus on whether there is a state interest in compelling employee contributions to a labor organization of the majority's choice "as opposed to the political party" of the majority's choice. A labor organization is clearly an adversary of the legislature and thus would not serve any state interest.

While unions will argue that expenses for negotiating contracts for all employees should be borne by all employees, the argument doesn't justify "the compulsory 'full share' contribution which is what agency shop really is."

A "rebate program" in which part of the agency shop fees are refunded--in an amount equal to that spent in non-negotiations-related areas--"puts the burden on the wrong party." It affects the person who wishes to protect First Amendment rights rather than the person wishing to infringe on such rights. In that sense, the "rebate" approach is more restrictive than "fair share," because in the latter case "the employee never parts with the money" unless it is clearly a negotiations-related expense. In a "rebate" situation, the employee "must pay the full amount and then fight like mad to get back some portion if he can show it was misused."

A. L. Zwerdling, general counsel in Washington, D.C. for the American Federation of State, County, and Municipal Employees:

AFSCME asks for contributions to support the union financially and is "sensitive" to those who are opposed to use of dues for political purposes. The union thus offers a "rebate" program.

"Those who are arguing against union security are really arguing against the concept of stability" in labor relations.

AFSCME's rebate program is now about three years old. The union "really believes that non-believers" shouldn't have to contribute funds for political purposes. The union determines what portion goes into political causes, and an individual may then notify the secretary-treasurer for a rebate. If the person wishes to challenge the amount, the case is turned over to a judicial panel, and it may be appealed further to members of the union at a convention, if the individual is a union member. Nonmembers may appeal to a public panel of three neutrals.

Procedural Due Process

Benjamin Aaron, law professor, University of California at Los Angeles:

The co-existence of grievance arbitration provisions in contracts along with some grievance procedures in older civil service systems is one major source of the overall conflict between collective bargaining and civil service systems. The requirements of due process are often more strict in the civil service than in bargaining schemes. One approach to the problem of conflicting systems would be to allow employees to make a binding selection--in disciplinary and discharge cases particularly--of an existing statutory procedure or the machinery in the negotiated contract.

In the last 15 years, the "principal source" of law on procedural due process in dismissal cases has been the Supreme Court, but the standard in its decisions has been "neither static nor evolutionary. It can best be described as undulating."

Based on Supreme Court and other decisions in the area, procedural due process "ought in theory to be given greater protection in government employment than in the private sector." The present Supreme Court "has applied no principled or consistent standards" for protection of public sector due process.

Prospects for the Future

Arnold R. Weber, provost of Carnegie-Mellon University and formerly director of the Cost of Living Council:

"Informed projections" on the future of collective bargaining in the public sector point toward a period of "rationalization of the legal framework," continued union growth, and a "hardening" of the collective bargaining process.

Bargaining in the public sector is now in "sort of a watershed" period, having been around some 15 years since the issuance of Executive Order 10988 in federal labor relations, and the enactment of early state laws such as those in Wisconsin and New York. The parallel period in the private sector was from about 1935 to 1950, when the trade union movement experienced vast growth. But in the past 15 years, public sector bargaining has been "really the hot property," and has "been the development that has marked collective bargaining in general" in those years.

The growth of public employees unions has been coincidental with the expansion of the public sector. Public sector bargaining was "not the child of adversity: during the 1960s. Rather, the unions expanded in "an environment of superabundance," when "the general economic climate was suffused with growth." That new demand for resources went into the public sector. The civil rights movement, the automation debate, the baby boom, and exploding school enrollments were other developments peculiar to the times.

The development of unions during that period meant they were "children of affluence," and that particular environment was one in which public officials could "indulge the militancy of unions." In addition, the unions became "vehicles for new groups elbowing their way into the power system," making an impact on wages, working conditions, and a "wide range" of government decisions. The cast of characters in the public sector "explosion" starred "black garbagemen in Memphis", as well as "female teachers in New York," rather than the "brawny" union men of the 1930s organizing drives.

Lindsay of New York was the "perfect exponent of the times." He "expanded the payoff matrix to the lumpen proletariat of civil service professions," but the city of New York wasn't paying the bill. The Republic was.

Thus, the early 1960s saw several major developments that encouraged public sector bargaining: a "superabundance in the economic sense"; the dual progress of collective bargaining--which was "of dubious parentage,"--and political power (and the two "ran along" together like horses); and the superimposition of collective bargaining on an "ossified" personnel system. In the private sector, personnel procedures had developed as a function in response to the "threat of unionism." However, in the public sector the managers kept all the benefits and the old system of personnel management and "layered on the other good things" that private sector unions had developed, such as pension systems. So, there were "all sorts of benefits being layered in," creating an "incredible burden of costs" and making those costs "quasi-fixed."

Another characteristic of the development of public sector bargaining, was the "piquant fiction" that since there was an absence of the right to strike, the unions wouldn't go out. This belief provided managers with "a refuge," so they could say public sector strikes were "unthinkable." But unions struck anyway, and bargaining that developed in the absence of the right to strike "grew in a distorted way."

The early years also saw a "mixed pattern of unionism." There was AFSCME--"the biggest kid on the block"--and "traditional" unions like the Teamsters, and Service Employees, in addition to what Weber called "unionoids"--NEA, the nurses, and the American Association of University Professors. These last groups were like "homonoids or the Neanderthal man, because they walked upright, but never straight, and their hair distribution wasn't right."

Thus, there were three types of unions: the public sector unions, the private sector unions "getting in on the action," and the "unionoids," which "ultimately made the transformation" to unionism.

The action took place within "a highly fragmented legal structure. Here you just had this impossible melange" of executive orders, statutes, and statements of good intent, which "created an impediment to the development of rational structure."

But more recently, budget deficits and recession have resulted in a "sharp retrenchment" of resources, and everyone is asking "where do we go from here?" He predicted that "we will see in the next five years a rationalization of the legal framework through enactment of federal laws." Notwithstanding the National League of Cities case and the Congressional climate, there is still "an overriding necessity" for a federal law providing basic steps and procedures and setting forth obligations while still permitting "wide experiment" in impasse resolution.

Secondly, the changing legal framework "will abet" unionization in the public sector. In the private sector, unions hold a minority position because employers have responded to the challenge and unions "can't offer more." But in the public sector there is "no evidence that public management will provide a system of personnel administration as a viable alternative." They have one now, and "it's called civil service." Consequently, there will be "no real slowdown in organizing" because there is no alternative to the system.

Unions in the public sector will increasingly become "vehicles for sharing of legislative authority," and this new role will become clearer as the "superabundance" gives way to a period of "stringency and penuriousness." Unions will help decide what services will be cut.

There will be a greater development of special interest coalitions between public management and public unions because of the resistance of their constituencies to higher taxes, and "Weber's law," which dictates that the "coalitions of convenience" of unions and management, "when faced with fiscal stringency," will shift the problem to the next highest jurisdiction: from city to county, county to state, and from the state to the federal level.

The "integration of personnel and labor relations systems will take place largely through the collapse of the civil service system," which "won't survive."

Finally, there will be a "rationalization" of the bargaining structure through "special-purpose entities" to carry on the bargaining, elaborating the structure where there has been "poor quality bargaining" and lack of expertise.

Bargaining During the Fiscal Crisis

Richard Schnadig, attorney:

Some "past failures" by employers have "helped precipitate the crisis," but the "high cost of labor" is only one of the characteristics of the big cities in trouble.

Government salaries of state/local jurisdictions are usually the highest item in the expense line, and government employees are "highly paid on a comparable basis." The civil service system, which "acts as a necessary restraint" on the employer's ability to hire and fire, suffers "ridicule" from public sector labor unions, but the unions "are quick to utilize" the civil service laws when they need to.

Faced with many restraints such as civil service systems and "multiple forums"--including grievance and arbitration procedures as well as the civil service procedure--employers also must deal with "hydra-headed" politics. Special interest groups and politics "constantly" affect those bargaining on behalf of the public employer. In New York, public workers include a "significant group of voters," some of whom work for public officials' election drives. In the 1960s, political pressure coincided with union growth, lower taxes, and revenue sharing, so salaries as well as health insurance and other benefits were increased.

But "these kinds of giveaways" are not immediately visible to the public.

To meet their fiscal difficulties, public employers must engage in "taut, tough" bargaining, and begin the process by scrutinizing their existing contracts "to identify past giveaways" which now "cost a fortune." These include 32- to 35-hour work weeks; "free time" such as preparation time, roll call time, extended lunch breaks, excessive accumulation of sick and personal leave, and other "expensive frills"; and work rules which "directly impair efficiency," such as provisions for early closing, shutdowns in hot weather, and time off to process grievances. Employers should search contracts for restrictive clauses such as manning provisions. There are certain "economic benefits which are not justified or rationalized." In New York City, there is a uniform allowance for non-uniformed personnel which costs the city $8 million annually.

But employers should be willing, except in cases of financial impossibility, to "pay hard cash for a work force." The elimination of inefficient work practices and excessive days off "are worth their weight in municipal gold."

He urged public employers to disclose the "real costs" of their settlements--but not by inviting the press and the public to view interest arbitration proceedings. There should be a disclosure of costs in "dollar and cents" terms. Without "an informed electorate" there are likely to be "more giveaways."

Conclusions

The issues these distinguished attorneys deal with are similar to those facing the state correctional administrator. Yet, there are differences. Other than costs there is little evidence of concern for the operational problems of the administrator. There is no evidence of the recognition that patients, prisoners, and other persons with rights also exist and may fare better or worse depending upon how these issues eventually are resolved.

In any case, it is evident from the legal experts that there is going to be less rather than more federal involvement in public sector collective bargaining, and that this process, in some ways, will resemble a free-for-all for some time to come. Further constraints or standards, if any, must come from state legislatures and reform of extravagant practices by state management's self control and tough bargaining.

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APPENDIX A

A GLOSSARY
OF
COLLECTIVE BARGAINING TERMS

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, DC 20415

A GLOSSARY OF COLLECTIVE BARGAINING TERMS

AGENCY SHOP

A provision in a collective agreement which requires that all employees in the negotiating unit who do not join the exclusive representative pay a fixed amount monthly, usually the equivalent of organization dues, as a condition of employment. Under some arrangements, the payments are allocated to the organization's welfare fund or to a recognized charity. An agency shop may operate in conjunction with a modified union shop. (See Union Shop.)

AGREEMENT

See Collective Bargaining. A written agreement between an employer (or an association of employers) and an employee organization (or organizations), usually for a definite term, defining conditions of employment (conditions, etc.), rights of employees and the employee organization, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

AMERICAN ARBITRATION ASSOCIATION (AAA)

A private nonprofit organization established to aid professional arbitrators in their work through legal and technical services, and to promote arbitration as a method of settling commercial and labor disputes. The AAA provides lists of qualified arbitrators to employee organizations and employers on request.

AMERICAN FEDERATION OF LABOR – CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL–CIO)

A federation of approximately 130 autonomous national/international unions created by the merger of the American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO) in December 1955. More than 80 percent of union members in the United States are members of unions affiliated with the AFL-CIO. The initials AFL–CIO after the name of a union indicate that the union is an affiliate.

ANNUAL IMPROVEMENT FACTOR

Wage increases granted automatically each contract year, which are based upon increased employee productivity.

ARBITRATION (VOLUNTARY, COMPULSORY, ADVISORY)

Method of settling employment disputes through recourse to an impartial third party, whose decision is usually final and binding. Arbitration is voluntary when both parties agree to submit disputed issues to arbitration and compulsory if required by law. A court order to carry through a voluntary arbitration agreement is not generally considered as compulsory arbitration. Advisory arbitration is arbitration without a final and binding award.

ARBITRATOR (IMPARTIAL CHAIRMAN)

An impartial third party to whom disputing parties submit their differences for decision (award). An ad hoc arbitrator is one selected to act in a specific case or a limited group of cases. A permanent arbitrator is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

AUTHORIZATION CARD

A statement signed by an employee authorizing an organization to act as his representative in dealings with the employer, or authorizing the employer to deduct organization dues from his pay (checkoff). (See Card Check.)

BARGAINING RIGHTS

Legally recognized right to represent employees in negotiations with employers.

BARGAINING UNIT

Group of employees recognized by the employer or group of employers, or designated by an authorized agency as appropriate for representation by an organization for purposes of collective negotiations.

BOYCOTT

Effort by an employee organization, usually in collaboration with other organizations, to discourage the purchase, handling, or use of products of an employer with whom the organization is in dispute. When such action is extended to another employer doing business with the employer involved in the dispute, it is termed a secondary boycott.

BUMPING (ROLLING)

Practice that allows a senior employee (in seniority ranking or length of service) to displace a junior employee in another job or department during a layoff or reduction in force. (See Seniority.)

BUSINESS AGENT (UNION REPRESENTATIVE)

Generally, a full-time paid employee or official of a local union whose duties include day-to-day dealing with employers and workers, adjustments of grievances, enforcement of agreements, and similar activities. (See International representative.)

BUSINESS UNIONISM ("BREAD-AND-BUTTER" UNIONISM)

Union emphasis on higher wages and better working conditions through collective bargaining rather than political action or radical reform of society. The term has been widely used to characterize the objectives of the trade union movement in the United States.

CALL-IN PAY (CALLBACK PAY)

Amount of pay guaranteed to a worker recalled to work after completing his regular work shift. Call-in pay is often used as a synonym for reporting pay. (See Reporting Pay.)

CARD CHECK

Procedure whereby signed authorization cards are checked against a list of employees in a prospective negotiating unit to determine if the organization has majority status. *The employer may recognize the organization on the basis of this check without a formal election.* Card checks are often conducted by an outside party, e.g., a respected member of the community. (See Authorization card.)

CERTIFICATION

Formal designation by a government agency of the organization selected by the majority of the employees in a supervised election to act as exclusive representative for all employees in the bargaining unit.

CHECK-OFF (PAYROLL DEDUCTION OF DUES)

Practice whereby the employer, by agreement with the employee organization (upon written authorization from each employee where required by law or agreement), regularly withholds organizational dues from employees' salary payments and transmits these funds to the organization. The check-off is a common practice and is not dependent upon the existence of a formal organizational security clause. The check-off arrangement may also provide for deductions of initiation fees and assessments. (See Union security.)

CLOSED SHOP

A form of organizational security provided in an agreement which binds the employer to hire and retain only organization members in good standing. The closed shop is prohibited by the Labor Management Relations Act of 1947 which applies, however, only to employers and employees in industries affecting interstate commerce.

COLLECTIVE BARGAINING

A process whereby employees as a group and their employers make offers and counter-offers in good faith on the conditions of their employment relationship for the purpose of reaching a mutually acceptable agreement, and the execution of a written document incorporating any such agreement if requested by either party. Also, a process whereby a representative of the employees and their employer jointly determine their conditions of employment.

COMPANY UNION

An employee organization that is organized, financed, or dominated by the employer and is thus suspected of being an agent of the employer rather than of the employees. Company unions are prohibited under the Labor Management Relations Act of 1947. The term also survives as a derogatory charge leveled against an employee organization accused of being ineffectual.

COMPULSORY ARBITRATION

(See Arbitration.)

CONCILIATION

(See Mediation.)

CONSULTATION

An obligation on the part of employers to consult the employee organization on particular issues before taking action on them. In general, the process of consultation lies between notification to the employee organization, which may amount simply to providing information, and negotiation, which implies agreement on the part of the organization before the action can be taken.

CONTINUOUS NEGOTIATING COMMITTEES (INTERIM COMMITTEES)

Committees established by employers and employee organizations in a collective negotiating relationship to keep an agreement under constant review, and to discuss possible changes in it long in advance of its expiration date. The continuous committee may provide for third-party participation.

CONTRACT BAR

A denial of a request for a representation election, based on the existence of a collective agreement. Such an election will not be conducted by the National Labor Relations Board if there is in effect a written agreement which is binding upon the parties, has not been in effect for more than a "reasonable" time, and its terms are consistent with the National Labor Relations Act. "Contract bars" in state government are established by state laws and state agencies.

COOLING-OFF PERIOD

A period of time which must elapse before a strike or lockout can begin or be resumed by agreement or by law. The term derives from the hope that the tensions of unsuccessful negotiation will subside in time so that a work stoppage can be averted.

CRAFT UNION

A labor organization which limits membership to workers having a particular craft or skill or working at closely related trades. In practice, many so-called craft unions also enroll members outside the craft field, and some come to resemble industrial unions in all major respects. The traditional distinction between craft and industrial unions has been substantially blurred. (See Industrial Union.)

CRAFT UNIT

A bargaining unit composed solely of workers having a recognized skill, for example, electricians, machinis or plumbers.

CREDITED SERVICE

Years of employment counted for retirement, severance pay, seniority. (See Seniority.)

CRISIS BARGAINING

Collective bargaining taking place under the shadow of an imminent strike deadline, as distinguished from extended negotiations in which both parties enjoy ample time to present and discuss their positions. (See Continuous bargaining committees.)

DECERTIFICATION

Withdrawal by a government agency of an organization's official recognition as exclusive negotiating representative.

DISPUTE

Any disagreement between employers and the employee organization which requires resolution in one way or another; e.g., inability to agree on contract terms or unsettled grievances.

DOWNGRADING (DEMOTION)

Reassignment of workers to tasks or jobs requiring lower skills and with lower rates of pay.

DUAL UNIONISM

A charge (usually a punishable offense) leveled at a union member or officer who seeks or accepts membership or position in a rival union, or otherwise attempts to undermine a union by helping its rival.

DUES DEDUCTION

(See Checkoff.)

ELECTION

(See Representation election.)

ESCALATOR CLAUSE

Provision in an agreement stipulating that wages are to be automatically increased or reduced periodically according to a schedule related to changes in the cost of living, as measured by a designated index, or, occasionally, to another standard, e.g., an average earnings figure. Term may also apply to any tie between an employee benefit and the cost of living, as in a pension plan.

ESCAPE CLAUSE

General term signifying release from an obligation. One example is found in maintenance-of-membership arrangements which give union members an "escape period" during which they may resign from membership in the union without forfeiting their jobs.

EXCLUSIVE BARGAINING RIGHTS

The right and obligation of an employee organization designated as majority representative to negotiate collectively for all employees, including nonmembers, in the negotiating unit.

FACT-FINDING BOARD

A group of individuals appointed to investigate, assemble, and report the facts in an employment dispute, sometimes with authority to make recommendations for settlement.

"FAVORED NATIONS" CLAUSE

An agreement provision indicating that one party to the agreement (employer or union) shall have the opportunity to share in more favorable terms negotiated by the other party with another employer or union.

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

An independent federal agency which provides mediators to assist the parties involved in negotiations, or in a labor dispute, in reaching a settlement; provides lists of suitable arbitrators on request; and engages in various types of "preventive mediation." Mediation services are also provided by several state agencies.

FREE RIDERS

A derogatory term applied to persons who share in the benefits resulting from the activities of an employee organization but who are not members of, and pay no dues to, the organization.

FRINGE BENEFITS

Generally, supplements to wages or salaries received by employees at a cost to employers. The term encompasses a host of practices (paid vacations, pensions, health and insurance plans, etc.) that usually add to something more than a "fringe," and is sometimes applied to a practice that may constitute a dubious "benefit" to workers. No agreement prevails as to the list of practices that should be called "fringe benefits." Other terms are often substituted for "fringe benefits" include "wage extras," "hidden payroll," "nonwage labor costs," and "supplementary wage practices." The Bureau of Labor Statistics uses the phrase "selected supplementary compensation or remuneration practices," which is then defined for survey purposes.

GRIEVANCE

Any complaint or expressed dissatisfaction by an employee in connection with his job, pay, or other aspects of his employment. Whether such complaint or expressed dissatisfaction is formally recognized and handled as a "grievance" depends on the scope of the grievance procedure.

GRIEVANCE PROCEDURE

Typically a formal plan, specified in a collective agreement, which provides for the adjustment of grievances through discussions at progressively higher levels of authority in management and the employee organization, usually culminating in arbitration if necessary. Formal plans may also be found in companies and public agencies in which there is no organization to represent employees.

IMPARTIAL CHAIRMAN (UMPIRE)

An arbitrator employed jointly by an employee organization and an employer, usually on a long-term basis, to serve as the impartial party on a tripartite arbitration board and to decide all disputes or specific kinds of disputes arising during the life of the contract. The functions of an impartial chairman often expand with experience and the growing confidence of the parties, and he alone may constitute the arbitration board in practice.

INDUSTRIAL UNION (VERTICAL UNION)

A union that represents all or most of the production, maintenance and related workers, both skilled and unskilled, in an industry, or company. Industrial unions may also include office, sales, and technical employees of the same companies. (See Craft union.)

INJUNCTION (LABOR INJUNCTION)

Court order restraining one or more persons, corporations, or unions from performing some act which the court believes would result in irreparable injury to property or other rights.

INTERNATIONAL REPRESENTATIVE (NATIONAL REPRESENTATIVE, FIELD REPRESENTATIVE)

Generally, a full-time employee of a national or international union whose duties include assisting in the formation of local unions, dealing with affiliated local unions on union business, assisting in negotiations and grievance settlements, settling disputes within and between locals, etc. (See Business agent.)

INTERNATIONAL UNION

A union claiming jurisdiction both within and outside the United States (usually in Canada). Sometimes the term is loosely applied to all national unions; that is, "international" and "national" are used interchangeably.

JOB POSTING

Listing of available jobs, usually on a bulletin board, so that employees may bid for promotion or transfer.

JOINT BARGAINING

Process in which two or more unions join forces in negotiating an agreement with a single employer.

JURISDICTIONAL DISPUTE

Conflict between two or more employee organizations over the organization of a particular establishment or whether a certain type of work should be performed by members of one organization or another. A jurisdictional strike is a work stoppage resulting from a jurisdictional dispute.

LABOR GRADES

One of a series of rate steps (single rate or a range of rates) in the wage structure of an establishment. Labor grades are typically the outcome of some form of job evaluation, or of wage-rate negotiations, by which different occupations are grouped, so that occupations of approximately equal "value" or "worth" fall into the same grade and, thus, command the same rate of pay.

LABOR MANAGEMENT RELATIONS ACT OF 1947 (TAFT-HARTLEY ACT)

Federal law, amending the National Labor Relations Act (Wagner Act), 1935, which, among other changes, defined and made illegal a number of unfair labor practices by unions. It preserved the guarantee of the right of workers to organize and bargain collectively with their employers, or to refrain from such activities, and retained the definition of unfair labor practices as applied to employers. The act does not apply to employees in a business or industry where a labor dispute would not affect interstate commerce. Other major exclusions are: Employers subject to the Railway Labor Act, agricultural workers, government employees, nonprofit hospitals, domestic servants, and supervisors. Amended by Labor-Management Reporting and Disclosure Act of 1959. See National Labor Relations Act; National Labor Relations Board; Unfair labor practices; Section 14 (b) Labor Management Relations Act of 1947.

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 (LANDRUM-GRIFFIN ACT)

A federal law designed "to eliminate or prevent improper practices on the part of labor organizations, employers," etc. Its seven titles include a bill of rights to protect members in their relations with unions; regulations of trusteeships; standards for elections; and fiduciary responsibility of union officers. The Labor Management Relations Act of 1947 was amended in certain respects by this act.

MAINTENANCE-OF-MEMBERSHIP CLAUSE

A clause in a collective agreement providing that employees who are members of the employee organization at the time the agreement is negotiated, or who voluntarily join the orgainzation subsequently, must maintain their membership for the duration of the agreement, or possibly a shorter period, as a condition of continued employment. See Union security.

MANAGEMENT PREROGATIVES

Rights reserved to management, which may be expressly noted as such in a collective agreement. Management prerogatives usually include the right to schedule work, to maintain order and efficiency, to hire, etc.

MASTER AGREEMENT

A single or uniform collective agreement covering a number of installations of a single employer or the members of an employers' association. (See Multi-employer bargaining.)

MEDIATION (CONCILIATION)

An attempt by a third party to help in negotiations or in the settlement of an employment dispute through suggestion, advice, or other ways of stimulating agreement, short of dictating its provisions (a characteristic of arbitration). Most of the mediation in the United States in undertaken through federal and state mediation agencies. A mediator is a person who undertakes mediation of a dispute. Conciliation is synonymous with mediation.

MERIT INCREASE

An increase in employee compensation given on the basis of individual efficiency and performance.

MOONLIGHTING

The simultaneous holding of more than one paid employment by an employee, e.g., a full-time job and a supplementary job with another employer, or self-employment.

MULTI-EMPLOYER BARGAINING

Collective bargaining between a union or unions and a group of employers, usually represented by an employer association, resulting in a uniform or master agreement.

NATIONAL LABOR RELATIONS ACT OF 1935 (WAGNER ACT)

Basic federal act guaranteeing employees the right to organize and bargain collectively through representatives of their own choosing. The Act also defined "unfair labor practices" as regards employers. It was amended by the Labor Management Relations Act of 1947 and the Labor-Management Reporting and Disclosure Act of 1959.

NATIONAL LABOR RELATIONS BOARD (NLRB)

Agency created by the National Labor Relations Act (1935) and continued through subsequent amendments. The functions of the NLRB are to define appropriate bargaining units, to hold elections to determine whether a majority of workers want to be represented by a specific union or no union, to certify unions to represent employees, to interpret and apply the Act's provisions prohibiting certain employer and union unfair practices, and otherwise to administer the provisions of the Act. (See Labor Management Relations Act of 1947.)

NATIONAL UNION

Ordinarily, a union composed of a number of affiliated local unions. The Bureau of Labor Statistics in its union directory, defines a national union as one with agreements with different employers in more than one state, or an affiliate of the AFL-CIO, or a national organization of government employees. See International union.

NO-STRIKE AND NO-LOCKOUT CLAUSE

Provision in a collective agreement in which the employee organization agrees not to strike and the employer agrees not to lockout for the duration of the contract. These pledges may be hedged by certain qualifications, e.g., the organization may strike if the employer violates the agreement.

OPEN-END AGREEMENT

Collective bargaining agreement with no definite termination date, usually subject to reopening for negotiations or to termination at any time upon proper notice by either party.

OPEN SHOP

A policy of not recognizing or dealing with a labor union, or a place of employment where union membership is not a condition of employment. (See Union security.)

PACKAGE SETTLEMENT

The total money value (usually quoted in cents per hour) of a change in wages or salaries and supplementary benefits negotiated by an employee organization in a contract renewal or reopening.

PAST PRACTICE CLAUSE

Existing practices in the unit, sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement, except, perhaps, by reference to their continuance.

PATTERN BARGAINING

The practice whereby employers and employee organizations reach collective agreements similar to those reached by the leading employers and employee organizations in the field.

PAYROLL DEDUCTIONS

Amounts withheld from employees' earnings by the employer for social security, federal income taxes, and other governmental levies; also may include organization dues, group insurance premiums, and other authorized assignments. (See Check-off.)

PICKETING

Patrolling, usually near the place of employment, by members of the employee organization to publicize the existence of a dispute, persuade employees and the public to support the strike, etc. Organizational picketing is carried on by an employee organization for the purpose of persuading employees to join the organization or authorize it to represent them. Recognitional picketing is carried on to compel the employer to recognize the organization as the exclusive negotiating agent for his employees. Informational picketing is directed toward advising the public that an employer does not employ members of, or have an agreement with, an employee organization.

PREVENTIVE MEDIATION

Procedures designed to anticipate and to study potential problems of employment relations. These procedures may involve early entry into employment disputes before a strike threatens.

PROBATIONARY PERIOD

Usually a stipulated period of time (e.g., 30 days) during which a newly hired employee is on trial prior to establishing seniority or otherwise becoming a regular employee. Sometimes used in relation to discipline, e.g., a period during which a regular employee, guilty of misbehavior, is on trial. Probationary employee- a worker in a probationary period. Where informal probation is the practice, a worker who has not yet attained the status of regular employee may be called a temporary employee.

RAIDING (NO-RAIDING AGREEMENT)

Term applied to an organization's attempt to enroll members belonging to another organization or employees already covered by a collective agreement negotiated by another organization, with the intent to usurp the latter's bargaining relationship. A no-raiding agreement is a written pledge signed by two or more employee organizations to abstain from raiding and is applicable only to signatory organizations.

RATIFICATION

Formal approval of a newly negotiated agreement by vote of the organization members affected.

REAL WAGES

Purchasing power of money wages, or the amount of goods and services that can be acquired with money wages. An index of real wages takes into account changes over time in earnings levels and in price levels as measured by an appropriate index, e.g., the Consumer Price Index.

RECOGNITION

Employer acceptance of an organization as authorized to negotiate, usually for all members of a negotiating unit.

REOPENING CLAUSE

Clause in a collective agreement stating the time or the circumstances under which negotiations can be requested, prior to the expiration of the contract. Reopenings are usually restricted to salaries and other specified economic issues, not to the agreement as a whole.

REPORTING PAY

Minimum pay guaranteed to a worker who is scheduled to work, reports for work, and finds no work available, or less work than can be done in the guaranteed period (usually 3 or 4 hours). Sometimes identified as "call-in pay." (See Call-in pay.)

REPRESENTATION ELECTION (ELECTION)

Election conducted to determine whether the employees in an appropriate unit (See Bargaining Unit) desire an organization to act as their exclusive representative.

RIGHT-TO-WORK LAW

Legislation which prohibits any contractual requirement that an employee join an organization in order to get or keep a job.

RUNOFF ELECTION

A second election conducted after the first produces no winner according to the rules. If more than two options were present in the first election, the runoff may be limited to the two options receiving the most votes in the first election. (See Representation election.)

SENIORITY

Term used to designate an employee's status relative to other employees, as in determining order of promotion, layoff, vacation, etc. Straight seniority – seniority acquired solely through length of service. Qualified seniority – other factors such as ability considered with length of service. Departmental or unit seniority – seniority applicable in a particular department or agency of the town, rather than in the entire establishment. Seniority list – individual workers ranked in order of seniority. (See Superseniority.)

SHOP STEWARD (UNION STEWARD, BUILDING REPRESENTATIVE)

A local union's representative in a plant or department elected by union members (or sometimes appointed by the union) to carry out union duties, adjust grievances, collect dues, and solicit new members. Shop stewards are usually fellow employees, and perform duties similar to those of building representatives in public schools.

STANDARD AGREEMENT (FORM AGREEMENT)

Collective bargaining agreement prepared by a national or international union for use by, or guidance of, its local unions, designed to produce standardization of practices within the union's bargaining relationships.

STRIKE (WILDCAT, OUTLAW, QUICKIE, SLOWDOWN, SYMPATHY, SITDOWN, GENERAL)

Temporary stoppage of work by a group of employees (not necessarily members of a union) to express a grievance, enforce a demand for changes in the conditions of employment, obtain recognition, or resolve a dispute with management. Wildcat or outlaw strike – a strike not sanctioned by union and one which violates a collective agreement. Quickie strike – a spontaneous or unannounced strike. Slowdown – a deliberate reduction of output without an actual strike in order to force concessions from an employer. Sympathy strike – strike of employees not directly involved in a dispute, but who wish to demonstrate employee solidarity or bring additional pressure upon employer involved. Sitdown strike – strike during which employees remain in the workplace, but refuse to work or allow others to do so. General strike – strike involving all organized employees in a community or country (rare in the United States). Walkout – same as strike.

STRIKE VOTE

Vote conducted among members of an employee organization to determine whether or not a strike should be called.

SUPERSENIORITY

A position on the seniority list ahead of what the employee would acquire solely on the basis on length of service or other general seniority factors. Usually such favored treatment is reserved to union stewards, or other workers entitled to special consideration in connection with layoff and recall to work.

SWEETHEART AGREEMENT

A collective agreement exceptionally favorable to a particular employer, in comparison with other contracts, implying less favorable conditions of employment than could be obtained under a legitimate collective bargaining relationship.

TAFT-HARTLEY ACT

(See Labor Management Relations Act of 1947.)

UNFAIR LABOR PRACTICE

Action by either an employer or employee organization which violates certain provisions of national or state employment relations act, such as a refusal to bargain in good faith. Unfair labor practices strike – a strike caused, at least in part, by an employer's unfair labor practice.

UNION SECURITY

Protection of a union's status by a provision in the collective agreement establishing a closed shop, union shop, agency shop, or maintenance-of-membership arrangement. In the absence of such provisions, employees in the bargaining unit are free to join or support the union at will, and, thus, in union reasoning, are susceptible to pressures to refrain from supporting the union or to the inducement of a "free ride."

UNION SHOP

Provision in a collective agreement that requires all employees to become members of the union within a specified time after hiring (typically 30 days), or after a new provision is negotiated, and to remain members of the union as a condition of continued employment. Modified union shop – variations on the union shop. Certain employees may be exempted, e.g., those already employed at the time the provision was negotiated and who had not yet joined the union.

WAGNER ACT

(See National Labor Relations Act of 1935)

WELFARE PLAN (EMPLOYEE-BENEFIT PLAN)

Health and insurance plans and other type of employee-benefit plans. The Welfare and Pension Plans Disclosure Act (1958) specifically defines welfare plans for purposes of compliance, but the term is often used loosely in employee relations.

WHIPSAWING

The tactic of negotiating with one employer at a time, using each negotiated gain as a lever against the next employer.

WORK STOPPAGE

A temporary halt to work, initiated by workers or employer, in the form of a strike or lockout. This term was adopted by the Bureau of Labor Statistics to replace "strikes and lockouts." In aggregate figures, "work stoppages" usually means "strikes and lockouts, if any"; as applied to a single stoppage, it usually means strike or lockout unless it is clear that it can only be one. The difficulties in terminology arise largely from the inability of the Bureau of Labor Statistics (and, often, the parties) to distinguish between strikes and lockouts since the initiating party is not always evident.

ZIPPER CLAUSE

An agreement provision specifically barring any attempt to reopen negotiations during the term of the agreement. (See reopening clause.)

APPENDIX B

PUBLIC SECTOR LABOR RELATIONS RESOURCES*

The correctional management team (from the director to first-line supervisors) and labor relations specialists in corrections need access to sources of information, resources for technical assistance, and training programs. The following section attempts to meet these needs for the correctional administrators. In addition to the listed resources shown, normally there are sources of information, technical assistance, and training programs through colleges and universities in each state.

Appendix B is divided into three parts: (1) Informational/Literature Resources in Public Sector Labor Relations, (2) General Labor Relations Literature, and (3) Technical Assistance and Training Resources. None of these listings is regarded as comprehensive.

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*From: Collective Bargaining in Corrections: An Instructional Guide, by Pliny O. Murphy III, MERIC final reports, 2/28.77. American Justice Institute, Sacramento, California.

Informational/Literature Resources
in Public Sector Labor Relations

1. Labor Arbitration in Government, American Arbitration Association, 1730 Rhode Island Avenue NW, Suite 509, Washington, D.C. 20036.

   A monthly summary of arbitration awards and fact-finding recommendations involving governmental agencies.

2. California Public Employee Relations. Quarterly periodical of employee relations in the public sector of the Institute of Industrial Relations, University of California, Berkeley, Calif. 94720.

   In-depth articles designed to provide up-to-date, useful information to those involved in employer-employee relations in public employment. Includes local, state, and national developments, a neutral's "log," as well as court decisions, ordinances and statutes.

3. The Federal Labor-Management Consultant. Biweekly newsletter published by the U.S. Civil Service Commission, Office of Labor-Management Relations, 1900 E Street NW, Room 7508, Washington, D.C. 20415

   A several-page newsletter designed to highlight significant decisions and actions by the Federal Labor Relations Council, the Federal Service Impasses Panel, the Assistant Secretary of Labor. Reports procedural changes and other labor relations developments within the federal service.

4. Government Employee Relations Report. Weekly subscription service published by the Bureau of National Affairs, Inc., 1231 25th Street NW, Washington, D.C. 20037.

   Short news articles on current developments, complete or partial texts of legal decisions, arbitration awards, contracts and legislation. Frequently excerpts significant portions of speeches and conferences (sometimes providing the entire text). Reprints short local, state, and federal articles and statistical data. Also keyed into two reference volumes with the following headings (not a complete list):

- Federal Programs: Rules, regulations, major administrative decisions, official documents and explanatory statements pertaining to collective bargaining by federal employees.

- State and Local Programs: Full text of public sector labor relations statutes, court decisions, attorneys' general opinions, executive orders, reports and recommendations of study commissions for each state and selected local jurisdictions.

- Issues and Techniques: Articles and other documents on "issues of moment," e.g., "Fact-finding--Its Values and Limitations" by William E. Simkin, and how-to-do-it articles, e.g., "How to Prepare Grievance Cases," and "Bargain Outline for Management."

- Data: Information on employment and earnings, extent of unionization and union membership, patterns in collective bargaining agreements and strike actions.

- Contracts: Selected collective bargaining agreements covering employees of federal, state and municipal agencies.

- Contract Clause Finder: An encyclopedia of actual contract practice with full examples of selected contract clauses.

- Glossary

- GERR Reference File Master Index

Other material published by the BNA include:

- Collective Bargaining Negotiations and Contracts

- BNA Policy and Practices, including a Bulletin to Management

- Daily Labor Report

- Fair Employment Practice Service

- The Labor Relations Reporter (LRR)

- The Government Manager

- Manpower Information Service

- Union Labor Report

- White Collar Report

5. Institute of Public Employment. Irregular series published by the New York State School of Industrial and Labor Relations, Cornell University, Ithaca, N.Y. 14850.

   Major monographs on current subjects of interest relating to public employment.

6. Journal of Collective Negotiations in the Public Sector. Quarterly journal published by Baywood Publishing Company, 1 Northwest Drive, Farmingdale, N.Y. 11735.

   Articles on all areas relating to conditions and terms of employment, salaries, fringe benefits, etc.

7. Labor Arbitration in Government. Monthly publication of the American Arbitration Association, 140 West 51st Street, New York, N.Y. 10020.

   A bulletin summarizing approximately 20-25 labor arbitration awards and fact-finding recommendations involving government and educational agencies.

8. LMRS Newsletter. Monthly newsletter of the Labor-Management Relations Service, a cooperative service of the National League of Cities, U.S. Conference of Mayors and the National Association of Counties, 1620 Eye Street NW, Washington, D.C. 20006.

   Regular feature article on topic of current interest; short accounts of current public sector labor-management affairs; bargaining; conferences; seminars; commission reports; court decisions; legislative developments; trends; listing of useful readings.

9. LMRS Pamphlet Series. Published by the Labor-Management Relations Service, 1620 Eye Street NW, Washington, D.C. 20006.

   Brief monographs on municipal labor relations.

10. New Jersey Public Employer-Employee Relations. Irregular newsletter of the Institute of Management and Labor Relations, Rutgers University, Ryders Lane and Clifton Avenue, New Brunswick, N.J. 08901.

   News bulletin containing short articles on public employment, state bargaining developments, employment relations board decisions, arbitration and court findings. Includes current literature listings.

11. Annual Report, New York Office of Collective Bargaining, 250 Broadway, New York, N.Y. 10007.

Briefly describes case processing, legislation and important developments occurring under the jurisdiction of the Office of Collective Bargaining; also statistical tables and lists of unions using OCB's services in past years.

12. Public Personnel Administration Labor-Management Relations. Biweekly subscription service of Prentice Hall, Inc., Englewood Cliffs, N.J. 07632.

Looseleaf containing the following:

- Report Bulletins: New developments; short articles describe problems and offer solutions.
- Cross-Reference Table: Assimilates volume material with new developments in Report Bulletin and New Ideas section.
- New Ideas: Articles by professional, public labor relations representatives, arbitrators, etc., on how they solve collective bargaining problems.
- Public Employment Relations Law: Full text of public sector collective bargaining laws or laws authorizing or restricting some aspect of union activity.
- Union Contract--Clauses and Analyses: Full texts of hundreds of clauses from selected contracts intended to cover all types of situations under public sector labor agreements.
- Index: References to all materials in volume; facilitates location of information.

Biweekly reports containing Report Bulletins, Cross-Reference Tables and replacement pages keep volume up to date.

13. Public Employee Relations Library. Series of books and monographs published five or six times annually by the International Personnel Management Association, 1313 East 60th Street, Chicago, Ill. 60637.

Articles on policies and practices within the public personnel field. Includes book and pamphlet reviews. Frequent articles on labor relations are also provided.

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14. Public Safety Labor Reporter. Monthly reporting service of the Public Safety Labor Relations Center, International Association of Chiefs of Police, 11 First Field Road, Gaithersburg, Md. 20760.

Reports on labor problems of police, sheriffs, fire and corrections agencies. Contains analysis and reference volumes.

The analysis volume contains:

- Feature articles on critical issues in public safety labor movement
- Analysis of the effect of labor relations legislation
- A review of recently negotiated agreements and contracts
- Reports of fact-finding and arbitration awards
- Rulings on discipline matters
- Employment practices and a cumulative index

The reference volume contains:

- Court decisions, a compilation of federal and state collective bargaining and strike legislations, and selected important bargaining and strike ordinances at the municipal level
- Collective bargaining agreements
- Arbitration and fact-finding awards
- Administrative law division
- Departmental rules and procedures
- Personnel forms and comparative labor data

15. Public Sector Labor Relations Information Exchange. Series published by the United States Department of Labor, Labor-Management Services Administration, Division of Public Employee Labor Relations, Washington, D.C. 20006

A series of extensive research reviews and bibliographies analyzing and summarizing public sector problem areas. The following publications have been disseminated and are updated periodically:

- Calendar of Events. Lists conferences, conventions and symposia of interest to parties in the public sector; issued quarterly.

- Current References and Information Services for Policy Decision Making in State and Local Government Labor Relations: A Selected Bibliography, Gilbert E. Donahue, 1971. Divided into five sections containing sources for:

  1. Background references for understanding the current situation

  2. Policy reports and recommendations by government, professional, business and union groups

  3. Proposed "model laws"

  4. Documentation of state and local experiences

  5. Current awareness sources and retrospective searching and documentation sources

- Directory of Public Employee Organizations: A Guide to the Major Organizations Representing State and Local Government Employees, 1971.

  Provides information on organizational structure, location and policies of public employee organizations which wholly or partially represent state and local nonfederal employees.

- Directory of National Unions and Employee Associations (with two supplements), 1973.

  Provides information on many aspects of union structure and membership; divided into five sections as follows:

  1. Structure of the labor movement in the U.S.

  2. Listing of national unions and professional and state employee associations

  3. Summary of significant developments in organized labor between 1971 and 1973

  4. Membership data on unions and associations for 1972

  5. Various functions and activities which unions perform

- A Directory of Public Employment Relations Boards and Agencies: A Guide to the Administrative Machinery for the Conduct of Public Employee-Management Relations Within the State, 1971.

- *Dispute Settlement in the Public Sector: The State-of-the-Art*, Thomas P. Gilroy and Anthony V. Sinicropi, 1972.

  Monograph with an annotated bibliography reviewing the state-of-the-art of dispute settlement in public employment.

- *Public Sector Labor Relations: Regional Series*, 1973.

  Background references for public sector experiences are subdivided into the following regional areas: I, Midwest; II, Mideast; III, Southeast; IV, Midatlantic.

- *Scope of Bargaining in the Public Sector - Concepts and Problems*, Paul Prasow and others, 1972.

  Articles on bargaining scope vs. the role of the Civil Service Commission, bargaining and professionalism, negotiation practices in government, and bibliographic material on relevant literature.

- *State Profiles: Current Statutes of Public Sector Labor Relations*, 1971

  Summarization of state statutes pertinent to public sector labor relations and prospects for legislation.

- *Summary of State Policy Regulations for Public Sector Labor Relations: Statutes, Attorney Generals' Opinions and Selected Court Decisions*, 1973.

  An annotated publication citing legal authority governing public employees--state, local, firemen, policemen and teachers.

16. *Prison Employee Unionism: The Impact on Corrections Administration and Programs*, by John M. Wynne Jr., Final report of Management-Employee Relations in Corrections Project conducted by the American Justice Institute, Sacramento, Calif., 1977; supported by a grant awarded by the Law Enforcement Assistance Administration, U.S. Department of Justice.

    A comprehensive analysis of the trends of correctional employee unions/associations and their effects upon correctional administration.

17. *Prison Employee Unionism: A Management Guide for Corrections Administrators*, by M. Robert Montilla, Final report of Management-Employee Relations in Corrections Project conducted by the American Justice Institute, Sacramento, Calif., 1977; supported by a grant awarded by the Law Enforcement Assistance Administration, U.S. Department of Justice.

    A general discussion of issues in state corrections with glossary, bibliography, and service and information resources.

General Labor Relations Literature

1. From the State Capitals - Labor Relations. A monthly publication by Bethune Jones, 321 Sunset Avenue, Asbury Park, N.J. 07712.

   A news service summarizing the latest municipal and state legislative and regulatory proposals and enactments.

2. From the State Capitals - Personnel Relations. A monthly publication by Bethune Jones, 321 Sunset Avenue, Asbury Park, N.J. 07712.

   A news service summarizing municipal and state legislative and regulatory developments affecting public personnel management.

3. Industrial and Labor Relations Review. Quarterly journal of the New York State School of Labor and Industrial Relations, Cornell University, Ithaca, N.Y. 14850.

   Lengthy articles on industrial relations issues, book reviews, current research and listing of recent publications.

4. Industrial Relations. A tri-annual publication of the Institute of Industrial Relations, University of California, Berkeley, Calif. 94720.

   Extensive articles on all aspects of the employment relationship; includes research notes and criticisms, as well as comments on past Industrial Relations articles.

5. Institute of Labor and Industrial Relations. Irregular series published by the University of Michigan and Wayne State University, Ann Arbor, Mich. 48106.

   Short reprints on both private and public sector labor relations policy. Also includes a monograph series, complete with bibliographies, examining international labor relations with regard to public employment.

6. Industrial Relations Research Association Annual. Series published seven times per year by the Industrial Relations Research Association, 7114 Social Science Building, University of Wisconsin, Madison, Wis. 53706.

   Bound-volume publications of proceedings of the IRRA Conference. Short professional discussions on industrial relations issues, including public employment. Contains index to available IRRA publications, books and two-volume review of institute research.

7. Labor Law Journal. Monthly publication of the Commerce Clearinghouse, 4025 Peterson Avenue, Chicago, Ill. 60646.

   Major articles on legislative and administrative developments, employment news, court and arbitrators' decisions.

8. Labor Law Reports. Weekly publication of the Commerce Clearinghouse, 4025 Peterson Avenue, Chicago, Ill. 60646.

   Summaries of court and NLRB decisions, current developments on state legislation, strikes, union elections, and other news; also private and public sector coverage.

9. Monthly Labor Review. Published by the U.S. Bureau of Labor Statistics, Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

   Research journal with major articles on employment-related issues; complete with charts, tables and statistics. Also contains current domestic and foreign news developments, research notes, significant court decisions, book reviews and notes.

10. Proceedings of the Annual Meeting of the National Academy of Arbitration. Published by the Bureau of National Affairs, Inc., 1231 25th Street NW, Washington, D.C. 20037.

    Reproductions of conference discussions in bound-volume form. Regularly contains arbitration in the public sector; also cumulative author and subject index and appendices on special committee reports.

11. Public Affairs Information Service Bulletin. Weekly bibliographic service of the Public Affairs Information Service, Inc., 11 West 40th Street, New York, N.Y. 10018.

    Bulletin listing by subject of current books, pamphlets, periodicals, articles, government documents and other material in the field of economics and public affairs. Covers state, municipal and university developments. Publications from all English-speaking countries and articles from other countries written in English are also included, as well as five bound volumes issued annually superseding weekly issues.

Technical Assistance and Training Resources

Correctional administrators need access to technical and training resources; however, the importance of developing internal expertise cannot be overemphasized. The debate rages over the use of external vs. internal consultants in the collective bargaining process. It is a perceptive administrator who knows when to use either or both types of consultants and uses them wisely.

The following organizations offer a variety of technical and/or training services for the correctional field. This listing is not meant to be comprehensive either in terms of the organizations available or in the services offered by those that are listed.

1. American Arbitration Association, 1730 Rhode Island Avenue NW,
Suite 509, Washington, D.C. 20036.

The American Arbitration Association (AAA) is a public service not-for-profit, membership corporation. AAA was founded in 1926 to encourage the use of arbitration, mediation, conciliation, negotiation, democratic elections and other techniques of voluntary dispute settlement. Members include companies, labor unions, foundations and organizations of all kinds, as well as individuals who believe in an advancement of education in dispute resolution systems. Today, the Association is the most important center of education, training and research on arbitration, mediation, and other dispute resolution procedures.

The AAA's Department of Education and Training (AAA/DET) represents the Association's capabilities in providing quality conferences and skill-building programs on the procedures and techniques of arbitration, mediation, and other forms of peaceful dispute resolution for a variety of institutions, organizations, and community groups. Their experience in the criminal justice system, especially corrections, is extensive. AAA has a continuing training program funded by the National Institute of Corrections to provide training for state and local correctional administrative/management personnel in negotiations, collective bargaining, and arbitration advocacy skills. For further additional information regarding training, contact the Association's Department of Education and Training.

2. American Correctional Association, 4321 Hartwick Road, Suite L-208, College Park, Md. 20740.

   The Association offers technical assistance to state, county and local correctional agencies, providing a wide range of expertise through consultants who are knowledgeable in the field of corrections. For specific requests of services, contact the ACA, Project Director, Technical Assistance Project.

3. American Justice Institute, 1007 7th Street, Sacramento, Calif. 95814.

   The Institute offers a variety of consultative services through its technical assistance program. After completing a two-year study of the management-employee relationship in corrections, the Institute's expertise and access to labor relations consultants is most current. For further information regarding the Institute's services, contact the President of the American Justice Institute.

4. Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue NW, Washington, D.C. 20530.

   The LEAA provides matching grants to implement various projects and programs to improve criminal justice through state planning agencies. For further information regarding program areas, eligibility and the application and award process, contact your state planning agency.

5. Midwest Center for Public Sector Labor Relations, Indiana University, School of Public and Environmental Affairs, 400 East Seventh Street, Bloomington, Ind. 47401.

   The Center was established in part by a grant from the U.S. Civil Service Commission, Chicago Region, under the Intergovernmental Personnel Act (P.L. 91-648). The Center provides an ongoing means through which practitioners, government officials and the public-at-large can exchange information and cooperatively solve problems related to public sector labor relations in six midwestern states: Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. The Center maintains a public sector labor relations library and publishes the "Midwest Monitor," provides guidance regarding the improvement of skills in the collective bargaining process, and responds to specific requests for information. For further information, contact the Center for a full description of the services offered.

6. National Institute of Corrections, 320 First Street NW, Washington, D.C. 20534.

The NIC provides a variety of services for corrections. Its aim is to aid in the development of a more effective, more humane correctional system which will contribute to the safety of offenders, staff, as well as the community. The Institute receives and makes grants, serves as a clearinghouse and information center, provides consultation services, assists in the development and implementation of correctional programs, conducts and sponsors training of correctional personnel, conducts correctional research, and conducts programs evaluating the effectiveness of correctional delivery systems.

The NIC awarded a grant to the American Arbitration Association, Center for Dispute Settlement, to train correctional managers in labor relations. For further information concerning additional training in labor relations, contact the Director, NIC.

7. U.S. Civil Service Commission, 1900 Eye Street NW, Washington, D.C.

The U.S. Civil Service Commission provides training assistance to state and local governments as well as intergovernmental personnel grants. The Commission's objectives are to assist state and local governments in training administrators, professional and technical personnel, and assist in the development and implementation of programs consistent with the merit principle and to improve personnel administration. The Commission offers, through ten regional offices, numerous training programs for all levels of personnel in labor relations. For specific information regarding IPA grants and training, contact your nearest U.S. Civil Service Commission regional office, Attention: Regional Training Center, for training; and Attention: Chief, Intergovernmental Personnel Programs Division, for IPA grants.

Various universities and colleges offer seminars, conferences, workshops as well as full academic programs related to industrial/labor relations, and may provide technical assistance to management and labor. The following listing is only intended to exemplify the broad range of institutions available for such services:

1. University of California at Berkeley, Institute of Industrial Relations, 2521 Channing Way, Berkeley, Calif. 94720.

2. University of California at Los Angeles, Institute of Industrial Relations, Los Angeles, Calif. 90024.

3. University of Colorado, Center for Labor Education and Research, Boulder, Col. 80302.

4. University of Connecticut, Labor Education Center, Storrs, Conn. 06268.

5. Federal City College, Center for Labor Studies, 425 Second Street NW, Washington, D.C.

6. University of Hawaii, Institute of Industrial Relations, Honolulu, Hawaii 96822.

7. University of Illinois, Institute of Labor and Industrial Programs, La Salle Hotel, Rm. 222, 10 N. La Salle Street, Chicago, Ill. 60602.

8. Roosevelt University, Labor Education Division, 430 South Michigan Avenue, Chicago, Ill. 60640.

9. Southern Illinois University, Labor Institute, Carbondale, Ill. 62901.

10. Indiana University, Labor Education and Research Center, Division of University Extension, 201 Owen Hall, Bloomington, Ind. 47401.

11. University of Iowa, Center for Labor and Management, Phillips Hall, Iowa City, Iowa 52240.

12. University of Kentucky, Development Services Labor Education Center, College of Business and Economics, Lexington, Ky. 40506.

13. University of Maine, Bureau of Labor Education, 94 Bedford Street, Portland, Maine 04102

14. University of Massachusetts, Labor Relations and Research Center, 100 Arlington Street, Boston, Mass. 02116.

15. Michigan State University, School of Labor and Industrial Relations, South Kedzie Hall, East Lansing, Mich. 48823.

16. University of Michigan, The Labor Studies Center, Institute of Labor and Industrial Relations, 108 Museums Annex, Ann Arbor, Mich. 48104.

17. Wayne State University, Division of Labor Education and Services, 5229 Cass Avenue, Detroit, Mich. 48202.

18. University of Minnesota, Industrial Relations Center, 423 B.A. Tower, Minneapolis, Minn. 55455.

19. University of Missouri, Labor Education Program, 301 Whitten Hall, Columbia, Mo. 65201.

20. Rutgers, The State University of New Jersey, Department of Labor Services, New Brunswick, N.J. 08903.

21. Cornell University, New York State School of Industrial and Labor Relations, Ithaca, N.Y. 14850.

22. Ohio State University, Labor Education and Research Center, 65 South Oval Drive, 661 Page Hall, Columbus, Ohio 43210.

23. Pennsylvania State University, Department of Labor Studies, 160 Burrowes North, State College, Pa. 16801.

24. Virginia Polytechnic Institute, Labor Education Program, Pamplin Hall, Blacksburg, Va. 24061.

25. West Virginia University, Institute for Labor Studies, Appalachian Center, Morgantown, West Va. 26506.

26. University of Wisconsin, Institute of Industrial Relations, Madison, Wis. 53706.

27. University of Puerto Rico, Labor Relations Institute, Box BH, U.P.R. Station, Rio Pedres, Puerto Rico 00931.

Films

The use of films has been recommended in several of the units of training; the following film sources may be able to suggest substitute or additional films to be used in your training program.

United Auto Workers Film Library
East Jefferson Avenue
Detroit, Michigan 48214

Labor Education Division
Roosevelt University
430 South Michigan Avenue
Chicago, Illinois 60605

AFL-CIO
Catalogue listing films available:
AFL-CIO Pamphlet Division
815 Sixteenth Street NW
Washington, D.C. 20006

Contemporary Films (distributors for National Film Board of Canada films)
330 West 42nd Street, New York, New York 10036
828 Custer Street, Evanston, Illinois 60202
1214 Polk Street, San Francisco, California 94109

American Arbitration Association
Department of Education and Training
1730 Rhode Island Avenue NW
Washington, D.C. 20036

GLOSSARY OF TERMS IN PUBLIC SECTOR LABOR RELATIONS

Introduction

Collective bargaining in the public sector is a dynamic, rapidly changing process. New developments require constant updating in terms of knowledge and skills. This glossary has been compiled for correctional practitioners who have already acquired labor relations responsibility and for those who wish to broaden their knowledge of the vocabulary in order to interact within the growing field of public sector labor relations.

Private sector labor relations has had a significant influence upon public sector labor relations. For example, many states have modeled their collective bargaining structures after the National Labor Relations Act, a federal law regulating private sector labor relations. Many of the terms listed in the glossary originated in the private sector. They are included because private sector experience has been helpful while the public sector continues to gain expertise and define its needs.

The following publications are additional resources for individuals who are interested in broadening their knowledge of labor relations terms:

Dictionary of Industrial Relations, by Harold S. Roberts. Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037.

"Glossary of Collective Bargaining Terms," Government Employee Relations Reports Reference File No. 1. Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037.

"Industrial and Labor Relations Terms," by Robert E. Doherty and Gerald A. DiMarche. New York State School of Industrial and Labor Relations, Cornell University, Ithaca, New York 14853.

"Terms in Public Sector Labor Relations - A Practitioner's Guide," by the Midwest Center for Public Sector Labor Relations. School of Public and Environmental Affairs, Indiana University, 400 East Seventh Street, Bloomington, Indiana 47401.

Thesaurus of Descriptors for Public Sector Labor Relations, by Shirley F. Hauser, editor. New York State School of Industrial and Labor Relations and the Committee of University Industrial Relations Librarians, Cornell University Libraries Printing Service, Ithaca, New York 14853.

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